

CA2ALILR
69S51

C.V

CA2 ALILR 1969S51
Small Claims Procedure in Alberta - Research Project 4. 2



3 3398 00300 3349

SMALL CLAIMS PROCEDURE

IN ALBERTA

RESEARCH PROJECT #4

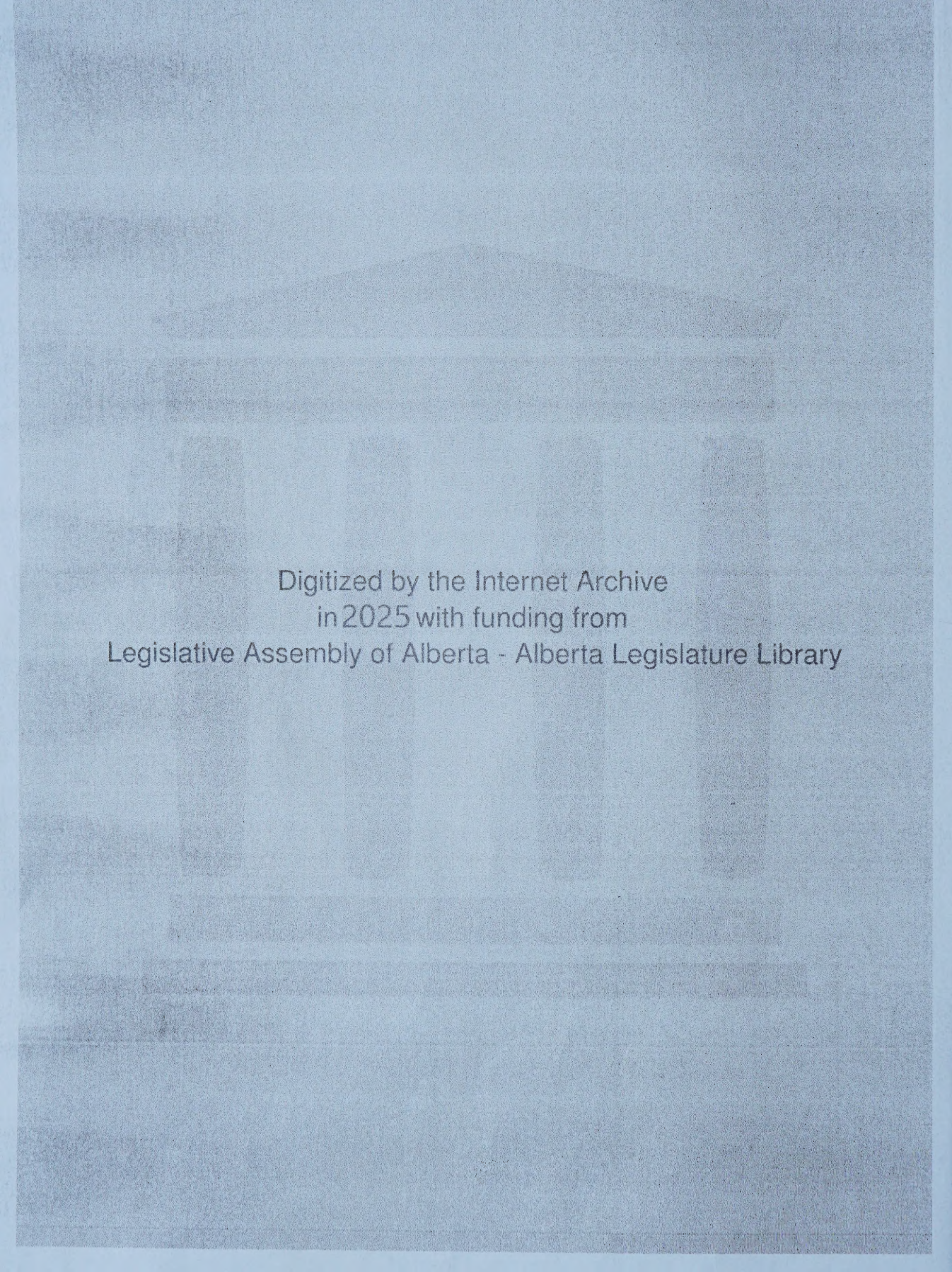
A REPORT TO THE INSTITUTE OF LAW

RESEARCH AND REFORM OF ALBERTA

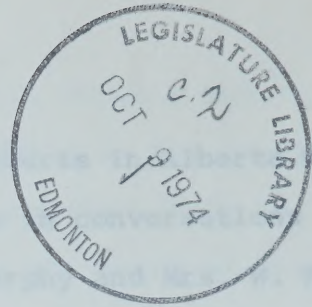
JUNE, 1969

J. W. Samuels
Assistant Professor,
Faculty of Law,
University of Alberta,
Edmonton, Alberta

LIBRARY
VAULT 19



Digitized by the Internet Archive
in 2025 with funding from
Legislative Assembly of Alberta - Alberta Legislature Library



SMALL CLAIMS PROCEDURE
IN ALBERTA

Research Project #4

A Report to the Institute of Law

Research and Reform of Alberta

June, 1969

J. W. Samuels,
Assistant Professor,
Faculty of Law,
University of Alberta,
Edmonton, Alberta

MY THANKS TO

the magistrates of the small claims courts in Alberta who offered their time and thoughts to me in conversations over the past year--the late Mr. J.R.L. Murphy and Mrs. W. Kempo of Edmonton, Mr. J.A. Morrison of Calgary, Mr. H.T. Deby of Drayton Valley, Mr. V.M. Whitaker of Red Deer, Mr. A.A. Gilchrist of Lethbridge and Mr. D.G. Cressman of Fort Macleod; the officials, magistrates and justices of other provinces who lent their comments--in Ontario, Mr. A.A. Russell, Q.C., Assistant Deputy Attorney-General, and Mr. R.A. McFarland of the Administration of Justice Division, Department of the Attorney-General; in Manitoba, Mr. Harold ff. Gyles, Chief Magistrate; in Saskatchewan, Mr. J. Holgate, Crown Solicitor, Department of the Attorney-General, and Judge L.F. Bence; in British Columbia, Mr. A.W. Hobbs, General Solicitor, Department of the Attorney-General, and Judge D.G. Ashby of the Small Debts Court in Victoria; Mr. S.A. Friedman, Assistant Deputy Attorney General, and Mr. T.J. Adamson, Supervisor of Legal Offices, Department of the Attorney-General of Alberta, for information concerning the number of small claims cases dealt with in the province over the last few years; Mrs. Kay Payne and Miss Peggy Sydorka, Clerks of the Small Claims Court in Edmonton, for their patience; Professor George Kupfer, Department of Sociology, University of Alberta, for his invaluable help in establishing the research design for the public and users questionnaires;

Mrs. A. Cooper, Mrs. E. Klompas, Miss J. Wright, Messrs. T. Clark, D. Ross and R. Iverach, students in the Faculty of Law at the University of Alberta, for their help in gathering all the information which is the heart of this report; Mr. R. White, student in the Faculty of Law at the University of Alberta, for his help in conquering the almost overwhelming obstacles encountered in analyzing the data through the use of the computer; and my wife, Pam, for taking the handwritten hodge-podge and converting it into the typed pages.

Users' Opinions and Comments	19
(i) Results of the Users' Questionnaire	19
(ii) Comments of Large Department Stores, Banks, Trust and Finance Companies	24
Results of the Public Questionnaire	26
Summary of Findings	34
Recommendations	38

Appendices

I. <u>The Small Claims Act, S.A. 1968, c. 91</u>	49
II. <u>The Small Claims Act Regulations, O.C. 1212/68, Alta. Reg. 240/68.</u>	61
<u>Sch. I - Forms</u>	
Form A (Summons)	66
Form B (Claim)	68
Form C (Counterclaim)	69
Form D (Certificate of Judgment)	70
Form E (Notice to Appear for Examination in Default)	70
Form F (Subpoena)	71
Form G (Warrant ... in case of lost negotiable instrument)	71
Form H (Warrant ... security for costs)	72
Form I (Affidavit of Service of Documents)	73

Mrs. A. Cooper, Mrs. E. Klopas, Miss J. Wright, Messrs.
T. Clark, D. Ross and R. Iversen, students in the Faculty
of Law at the University of Alberta, for their help in
gathering all the information which is the basis of this
report; Mr. R. White, student in the Faculty of Law at the
University of Alberta, for his help in comparing the almost
overwhelming obstacles encountered in analyzing the data
through the use of the computer; and my wife, Jan, for
taking the handwritten notes and converting it into
the typed pages.

Digitized by the Internet Archive
in 2025 with funding from
Legislative Assembly of Alberta - Alberta Legislature Library

TABLE OF CONTENTS

Introduction	Page 1
The Alberta Small Claims Act	4
Method of Research	8
(i) The Edmonton Small Claims Court	8
(ii) The Public Questionnaire	9
(iii) The Users' Questionnaire	11
(iv) Discussions with Officials	12
Operation of the Edmonton Small Claims Court	13
Users' Opinions and Comments	19
(i) Results of the Users' Questionnaire	19
(ii) Comments of Large Department Stores, Banks, Trust and Finance Companies	23
Results of the Public Questionnaire	26
Summary of Findings	35
Recommendations	38
 <u>Appendices</u>	
I. <u>The Small Claims Act, S.A. 1968, c. 93</u>	49
II. <u>The Small Claims Act Regulations, O.C. 1219/68,</u> <u>Alta. Reg. 206/68.</u>	66
<u>Sch. I - Forms</u>	
Form A (Summons)	66
Form B (Claim)	68
Form C (Counterclaim)	69
Form D (Certificate of Judgment)	70
Form E (Summons to Appear for Examination in Default)	70
Form F (Subpoena)	71
Form G (Bond ... in case of lost negotiable instrument)	71
Form H (Bond ... security for costs)	72
Form I (Affidavit of Service of Documents)	73

Introduction

A small claims system in a judicial set-up can fulfil two functions: it can operate as a collection agency for commercial organizations⁽¹⁾ and it can provide an access to the legal system for people too poor to avail themselves of the more formal and costly forms of litigation.⁽²⁾ The commercial world has developed a multitude of extra-legal means of debt collection. However, the final resort must always be to the legal system. If this system is to serve the commercial world adequately, it must provide a convenient means of legal recognition of the debt and a convenient access to the concomitant enforcement measures available. The poor too need an inexpensive judicial procedure which can handle their small claims. In this latter respect, the small claims system serves as a procedure in forma pauperis and supplements the measures provided in a legal aid program.

The small claims system, in both its functions, must provide a court procedure for those claims too small to merit the services of a lawyer. By this it is not meant that inexpensive matters do not involve legal difficulty that may tax the legal mind, but that inexpensive matters cannot support the cost involved in hiring the

(1) See Small Claims Courts as Collection Agencies (1952), 4 Stan. L. Rev. 237.

(2) See Scott, Small Causes and Poor Litigants (1923), 9 Am. Bar Assoc. J. 457; Maguire, Poverty and Civil Litigation (1923), 36 Harv. L. Rev. 361.

services of a lawyer. Thus the task of the small claims system is to provide an adequate means of legal resolution of claims without resort to a great deal of formality and expense. In the "best of all possible worlds," it may be possible to provide the same procedure for all claims regardless of their monetary value. However, we must be more practical and provide a procedure which bears some relation to the value of the claim and the expenditure of the parties.

At the outset then, two questions present themselves: Can a system be established which will deal adequately with small claims at little expense to the parties? Can one system fulfil both the functions of a small claims procedure--the commercial need for legal sanction in debt collection and the need of the poor for an inexpensive judicial process? To both of these questions I would answer "yes." The purpose of this report is to examine the operation of the present small claims system in Alberta, to compare it with what is expected of the system, then to recommend changes which will bring the actual operation closer to the expected performance.

The small claims procedure in Alberta established
(3)
by The Small Claims Act, S.A. 1968, c. 93, must be viewed

-
- (3) Prior to July 1, 1968, the governing legislation was The Small Debts Act, R.S.A. 1955, c. 314, as amended. The new Act basically streamlined the procedures set out in the old one and added actions for damage in breach of contract to the jurisdiction of the magistrate. The discussion in this report will center on the new legislation except where comparisons with the previous situation are necessary.

in perspective within the context of the administration of justice in the province. Several points should be kept in mind. In the first place, there is a small claims procedure available in the district courts. The Rules of Court permit some simplification of the litigation process where actions of under \$500 are undertaken.⁽⁴⁾ However, this procedure lacks the informality and ease of use necessary where the layman will handle his own claim. This is so more because of the ingrained feeling in the District Court that lawyers should represent plaintiff and defendant than because of differences on paper. Essentially the small claims procedure in the district courts permits a reduction in costs of action on small claims handled by a lawyer. Secondly, both The Masters and Servants Act, R.S.A. 1955, c. 194, as amended, and The Alberta Labor Act, R.S.A. 1955, c. 167, as amended, provide means of collection of wages due.⁽⁵⁾ Our concern, then, is with the system whereunder a claim can be handled by the layman without the services of a member of the legal profession. Claims for wages due will usually be handled through the mechanisms established by The Masters and Servants Act and The Alberta Labor Act.

-
- (4) Alberta Rules of Court, Reg. 390/68 (O.C.2208/68), rules 659-682; Sch. A, Forms N and P; Sch. E, pages 527 and 536.
- (5) The whole of The Masters and Servants Act deals with this problem. In The Alberta Labor Act, see, in particular, sections 41 (on time of payment) and 8 (on the inquiry and order procedure of the Board of Industrial Relations).

The Alberta Small Claims Act

The Act is found in Appendix I. Following is a brief summary of the procedure established by it.

Magistrates are given jurisdiction to try and adjudicate upon liquidated claims which do not exceed \$500 and upon damage claims which do not exceed \$200. The types of claims which can be brought are limited somewhat by the restrictions set out in section 4(1). The essential territorial restriction in the procedure is found in section 5(2). The magistrate may not try and adjudicate upon any matter under the Act unless "at the time the summons is issued, the defendant or one of the defendants resides or carries on business within the judicial district in which the magistrate resides." In other words, the plaintiff must seek out the defendant and take action under this Act at the home of the defendant. While the Act provides no restriction on the residence of the plaintiff, it is the practice, at least in Calgary, not to permit use of the Small Claims Court by a corporation which does not have a registered office in this province.

The plaintiff's claim is entered onto the Claim Form found in Appendix II. In Edmonton and Calgary, most big businesses (department stores, banks, finance companies and so on) have on hand some of these forms which they fill in themselves. Individuals who go to the Small Claims Court office will have their claim forms filled out by the clerks.

In outlying areas, by and large, the claim forms of all plaintiffs are filled up by the magistrates or their clerks, if they have one. Upon receiving the claim, a summons for trial is immediately issued by the magistrate returnable no more than 60 days from the date of issue (section 9(1)). In Edmonton, plaintiffs are given their summonses to serve. In Calgary and outlying areas, generally service of the summons is attempted by the magistrate by double registered mail; and if this fails, the summons is then given to the plaintiff for personal service. In any case, service can be effected either by personal delivery or by double registered mail (section 11(1)).

Before the summons is issued, the plaintiff must pay \$4 as a deposit on the taxable fees of the magistrate and his bailiff. The scale of fees is set out in Appendix II, Schedule II. The \$4 deposit will cover the issuing of the summons (\$1.50), the hearing and determining of the case (\$1.50), and the certificate of judgment (\$1.00). The practice is not to request more if the trial lasts more than one hour (\$1.00 per hour for each hour after the first), nor to refund a part of the deposit if the matter is settled before trial. Of course, if a plaintiff requested a refund, it would be made.

The defendant may counterclaim within the monetary limits established for the claim. The Counterclaim Form is found in Appendix II.

The defendant may, not later than 8 days before the date of the hearing, pay to the magistrate a sum of money in satisfaction of the claim and costs (section 15(1)). The plaintiff is notified of this payment and, if he proceeds with the claim and recovers no more than the amount paid to the magistrate, he is liable to pay costs to the defendant as directed by the magistrate (section 15(4)). The privilege of payment to the magistrate is also open to the defendant at the hearing with the same onus falling on the plaintiff thereafter (section 15(2)). Section 15(2) also permits payment to the magistrate at any time before the hearing. The exact meaning of this provision is unclear in view of the preceding sub-section. If, under section 15(2), payment to the magistrate can be made at any time before the hearing, why does section 15(1) provide that payment must be made not later than eight days before the date of the hearing?

In Edmonton, if at the first appearance of the parties the defendant indicates he intends to defend the action, the matter is adjourned for trial at a later date. In fact, recent practice is to adjourn the case for trial even when the case is undefended! This practice is not followed in Calgary and outlying areas where the case is dealt with on the day set out in the summons. It should be noticed that section 17(1) provides that the trial should be adjourned only upon application. Whether the action is defended or not, the plaintiff must prove his claim (section 26).

Trials are very informal. The parties are directed by the magistrate as to when to take the stand to give evidence, when to ask questions of the other side and so on. Much of the evidence is elicited by questions from the magistrate. Judgment is usually rendered immediately after the parties have submitted their arguments. A certificate of judgment is issued after the trial.

Section 30(1) of the Act provides that immediately after the trial a copy of the certificate of judgment should be furnished to each party to the action. In spite of this section, the practice followed in Edmonton, and recommended to others (though not necessarily followed) by the Attorney-General's Department, is to send the duplicate copy of the certificate to the defendant immediately but to retain the original for 30 days and then send it to the plaintiff.

If difficulty in collecting the judgment is met by the plaintiff (or defendant on a counterclaim), the certificate can be filed in the District Court and thereafter execution and garnishment proceedings can be taken according to the ordinary procedure of the District Court (section 15(3)).

Appeals may be taken from any judgment by the magistrate. The appeal lies to the District Court as a final court of appeal in matters under this Act. There are very, very few appeals.

Method of Research

The research into our small claims procedure has taken place on four levels. In the first place, we have examined the operation of the system as reflected in the cases which have gone through the Small Claims Court in Edmonton over a period of 18 months. The purpose of this examination was to determine who is using the system now, for what kinds of claims, in what amounts, and so on. This part of the study also revealed the length of time necessary to process the claims through the procedure. Secondly, we have discussed the operation of the system with some of its users to determine their reaction to the procedure having gone through it. Thirdly, we have made a small study into public awareness of the system and into the response of the public to legal problems. Do they want or need a small claims system? Fourthly, we have discussed the aims and operation of a small claims system with officials in other jurisdictions in Alberta and other provinces in Canada.

(i) The Edmonton Small Claims Court

In this part of the study, data was collected on the claims begun on and after July 1, 1967 and before December 31, 1968. Some of these claims had not been completely processed by April 30, 1969, and therefore were not included in the study. The need to complete this report by June 1969, prevented waiting for the completion of these few claims. The material gathered covered the type of

claimant, type of defendant, type of claim, values of claim and counterclaim (if any), disposition of the case, manner of representation at trial, value of judgment and length of time necessary for processing the case.

The material was transferred to computer punch cards and then to magnetic tape. Analysis of the data was done by computer, making use of the new program, available at the University of Alberta, Statistical Package for the Social Sciences.

(ii) The Public Questionnaire

Three income areas in Edmonton were chosen in which members of the public were questioned as to their knowledge of the present small claims system and their response to certain legal problems. Using the 1961 Census of Canada as a guide to income levels, and the 1966 Census of Canada as a guide for area boundaries, the census tracts in Edmonton were stratified by income levels. Low income level tracts were those where the median income was below \$5000 per household. Medium income tracts were those where the median income per household was between \$5000 and \$7,999. High income tracts were those where the median income per household equalled or exceeded \$8,000. One tract from each income level was selected, and, out of these tracts, two enumeration areas from each were chosen at random. Financial limitations on the study restricted us to taking the first enumeration area chosen in each census tract and using these three areas as a

population from which to draw subjects for the questionnaire. Thus, we had one high-income, one medium-income, and one low-income area in which to test the public. Fifty persons were questioned by personal interview in each area. These persons were selected in the following way: the research assistants randomly selected one household in the area with which to begin, then systematically took every xth household, depending on the number of households in the area. For instance, in the high-income area, there were some 156 households, so that after the first, every third household was selected.

It is felt that use of this survey design, though by no means exhaustive in a city of 400,000 people, permits a fairly accurate picture of the situation in the population as a whole.

The questionnaire, a copy of which is to be found in Appendix III, involved first some demographic questions (education, income, and so on). Then the persons interviewed were asked at what monetary level they would take action in certain situations (where a loan went unrepaid, and so on). These hypothetical questions were followed by inquiries as to what action would be taken. The next series of questions examined the knowledge of the rudiments of the present small claims system. Other questions requested information on the means of knowledge of legal rights and the possibility of using the small claims system once the basic facts about it were known.

(iii) The Users' Questionnaire

The users we looked to were those whose cases fell among the ones we analyzed in the Edmonton court.

We questioned plaintiffs whose cases had been settled and withdrawn, who had gone to trial and succeeded, or who had obtained a favorable judgment ex parte in an undefended action. All the plaintiffs canvassed fell outside the categories of the banks, trust and finance companies and large department stores. These regular users of the system were approached on a more selective and intensive basis than by means of the questionnaire. In other words, in the questionnaire we solicited information from those who met the system more or less for the first time when they had a small claim (some of the individuals questioned, however, had used the Small Claims Court frequently). The final restriction placed on the plaintiffs selected was that they had to represent themselves if they went to trial. Persons who used a lawyer were not approached. Plaintiffs who met the qualifications were selected from the total list of cases in an irregular, though not truly random, fashion.

The questionnaire, a copy of which is to be found in Appendix IV, was concerned with how the person found out about the court, how he viewed the help offered by the clerks and the magistrate, how he managed to collect his money (if at all) from the defendant, and his view of the system.

(iv) Discussions with Officials

The aims and operation of the small claims systems of Ontario, Manitoba, Saskatchewan and British Columbia were examined in discussions with magistrates (or provincial judges) and officials from the Attorney-General's Departments of these provinces. In Alberta, I canvassed the magistrates in Edmonton, Calgary, Drayton Valley, Red Deer, Lethbridge, and Fort Macleod.

Operation of the Edmonton Small Claims Court

The Edmonton Small Claims Court is second only to the Court in Calgary in the number of cases handled. In Table 1 of Appendix V a list of the number of cases by center can be found. Over the period April 1, 1968 to March 31, 1969, 1755 small claims cases were entered in the Edmonton Court, while in that time 2807 were entered in Calgary. The story of the Edmonton Small Claims Court is told in Tables 2 and following in Appendix V. The highlights of that story will be mentioned here.

The tables are based on information obtained from all the cases entered in the period June 1, 1967 to December 31, 1968 and disposed of by April 30, 1969. In all, there were 2282 claims examined. There were only six counterclaims over this period.

Table 2 shows the breakdown by type of claim. The main cause of action was an outstanding account. This was the basis of 1200 claims or 52.6% of all the claims entered. Default on a promissory note or cheque was the basis of 551 claims which was 24.2% of the total. Damage to home and automobile was the basis of only 6.4% of the cases. Claims for rent represented 4.8% of the total.

Table 3 indicates the type of plaintiff using the Court. Small businesses accounted for 45.3% of the total with 1025 claims. Individuals accounted for 24.5% of the total with 558 claims. The distinction between small

businesses and individuals was often difficult to draw, particularly in the case of an unincorporated sole proprietorship. The test used was the name under which the claim was filed. If a business name was used, for instance "XYZ Plumbing," the claimant was listed as a small business. This was also the case for the distinction between individuals and landlords (included in "Other" in Table 3). A claimant listed as "XYZ Rentals" was classified as a landlord. If "XYZ" himself was the claimant, he was classed as an individual. Finance companies made 265 claims or 12% of the total, while large department stores made 208 claims or 9.4% of the total. In all, the large institutions--finance companies, banks and big department stores--represented 25.4% of the claims entered. Small businesses and individuals made up 69.8% of the total. The principal point being that use of the court is made to a great extent by both large corporate organizations and smaller entities. The same pattern is felt to be the case in other centres in Alberta. The magistrates in Calgary, Drayton Valley, Red Deer, Lethbridge and Fort Macleod suggested a similar breakdown for their areas. Indeed, in the smaller places, it was felt that small businesses accounted for an even greater proportion of the number of cases.

The claims were made largely against individuals as shown in Table 13. In 1770 cases, individuals were the defendants while in 342 cases, small businesses were the

defendants. These two together account for 92.6% of the claims.

Some indication of the most frequent users of the Court is given in Tables 4 and 11. Table 4 lists the business concerns which individually used the Court the most. By far the greatest number of claims was made by Simpsons-Sears which accounted for 6.3% of all claims made over the period. Table 11 points out the types of small business user which made most frequent use of the Court. Service station operators accounted for 6.2% of all claims.

It was difficult to get precise figures on the number of cases in which legal counsel was employed by plaintiff or defendant. It was almost always recorded in the file when counsel appeared in Court. However, it was not always certain when a lawyer filed a claim which was later settled. Tables 10 and 12 indicate roughly the extent to which legal counsel was involved in small claim proceedings. Table 10 shows that in approximately 82% of the claims (1890 of 2282), neither side employed a lawyer at any stage in the proceedings. Of course, some plaintiffs were referred to the Small Claims Court by a lawyer. This figure would have to be adjusted downward to some extent, but the crucial point would remain-- the system is being used largely by laymen without the services of a lawyer. Table 12 gives some indication of the use of counsel by various types of claimant. Finance companies employed counsel in 66 (or slightly more) cases which is 24.9%

of the claims they made. Large department stores employed legal counsel in 21.2% (or slightly more) of the claims which they entered. By and large, individuals did the work themselves. In only 6.6% (or slightly more) of the claims filed by individuals was a lawyer involved.

Table 5 is significant. People are concerned with small matters and will go to the legal system for help over them. Of the 2196 claims for which a valid observation was made, 50.2% were for \$100 or less. Indeed, there were 251 claims for \$25 or less, which was 11.4% of the total. Table 6 illustrates this point further. Twenty-nine of the 144 claims made by Simpsons-Sears were for \$50 or less, and 36.8% of Simpsons' claims were for \$100 or less. The leading finance company users were more reluctant to sue over small matters. While a few of their claims were for \$100 or less, it is obvious that their threshold of action is in the neighbourhood of slightly more than \$100.

Table 7 shows the disposition of the claims. Of the 2282 cases entered in the period, only 913 ever proceeded to judgment or 40% of the total. The Court was notified of a settlement after the summons was issued but before an appearance in 26.3% of the cases. Of those actions which proceeded to judgment, the large majority were decided for the plaintiff ex parte. In other words, by and large, there is little dispute over the small claims entered. This is so no matter the type of claim as illustrated in Table 8.

On rent claims, only 55 of 110 proceeded to judgment, or 50%; on promissory note claims, only 182 of 339 ever proceeded to judgment, or 53.4%; on outstanding bill claims, 430 of 1200 claims went to judgment, or 35.8%; and on auto damage claims, 56 of 129 went to judgment, which is 43.4%. Again, the large majority of those which proceeded to judgment were decided for the plaintiff ex parte. The same point is again illustrated in Table 9 on the disposition of the cases of the frequent users. Of the 144 claims brought by Simpsons-Sears, 132 were either settled, adjourned sine die or ended in judgment ex parte. Twenty-seven of the 38 claims entered by Beneficial Finance were disposed of in one of these ways. These figures for Niagara Finance and The Bay were 35 out of 38, and 27 out of 29 respectively. In other words, there was very little dispute.

Table 14 illustrates the length of time taken to dispose of cases where at least one appearance was made in Court. There were 995 such cases: in 525 of them, only one appearance was made; in 412 cases, two appearances were made; and in 58 cases, three or more appearances were made. A rather significant point is made by these initial figures. In 460 cases of the 2282 entered in the 18-month period, more than one appearance was made in Court. This seems to be a high percentage for a small claims system where speed and economy are of the essence. In most of these multi-appearance

cases, the adjournment to a later appearance was at the order of the magistrate not at the request of the parties. Overall, the large majority of the claims were disposed of within 10 weeks. Eighty percent of the cases where at least one appearance was made were disposed of within this time. Within one month, 245 cases were disposed of; and within six weeks, 317 cases were disposed of. If one takes six weeks as a desirable time limit for the disposition of small claims, then presently only slightly less than one-third of the cases meet this standard in the Edmonton Court. From my discussions with the magistrates in other centres in Alberta, it would appear that their record is better in this respect than that of Edmonton. In the first place, in other centres cases are not adjourned for a second appearance unless the parties request this. Secondly, the magistrates suggested that most of their cases were disposed of within 6 weeks.

Users' Opinions and Comments

(i) Results of the Users' Questionnaire

The general comment on the system made by users who were given the Users' Questionnaire is favorable. Of 56 persons who responded to the question "Would you use the system again?," 50 said "Yes" while only 6 said "No." Indeed, 45 of these users have recommended the Small Claims Court to others. In other words, 89 percent of the users who expressed an opinion on their future use of the court said they would do so. Eighty percent of the users who responded to the question "Have you recommended the Small Claims Court to others?" said they had done so. This means that the vast majority of those using the court without the services of a lawyer, and who do not fall in the categories of the banks, trust and finance companies and large department stores, are generally satisfied with the system. The banks, trust and finance companies and large department stores who use the system frequently and regularly attest to their general satisfaction by this usage.

Those who responded that they would not use the Small Claims Court again did so vehemently and all for the same reason--they were unable to collect the money after judgment and therefore concluded that the system was "useless" and "ineffective".

Yet the overall record of collection of the debt, either before judgment or after it, was commendable. Ninety

percent of the matters withdrawn before trial were withdrawn because the defendant paid the claim upon receiving the summons. In fact, one small businessman, who used the court frequently, commented that only one out of every 75 to 100 claims he made actually went to trial. This is made more pointed when one also considers his comment that before the claim is filed, two letters are sent out by the company lawyer. The real catalyst moving the debtor to pay is the summons. The balance of the cases withdrawn before trial were withdrawn because of lack of service of the summons.

Sixty-five percent of the users whose cases went to trial and who obtained a favorable judgment said that they had collected their money. The answers to the question "How did you collect the money?" are difficult to analyze precisely because some users suggested several means which they customarily used. In other words, the response to the question was not directed only to the particular claim about which they were contacted. However, an indicative pattern did emerge. Without attaching actual percentages to the results (which would prove to be more misleading than helpful), it can be said that in the large majority of cases, the defendant simply paid when informed of the judgment. If legal process was required for enforcement, garnishment was used much more frequently than seizure.

In response to the question "Did you need a lawyer's services in the collection of your judgment?," 9 of the 32 responding said "Yes." In other words, 28 percent said that they did need the lawyer's services for collection while 72 percent said they did not. These figures correspond well to the means used in collection of the judgment. The services of the lawyer were called upon when garnishment or seizure were necessary.

An indication of the means of knowledge about the system is given by the response to the question "How did you learn of the small claims procedure?" There were 59 responses to this question: 12 learned of the Small Claims Court from a lawyer, 10 knew of it because of previous use, 16 heard of it "at work," and 21 learned of it by other means such as from a private investigator, the Edmonton Credit Bureau, friends, the newspaper, the Police, an accountant, and City Hall.

The comments on the personnel of the Edmonton Small Claims Court were interesting. The clerks were unanimously praised. All the plaintiffs found the clerks helpful in the preparation of the necessary documents, though almost 60% of them said they could have handled the claim without the assistance of the clerks. It should be pointed out that it is in view of the latter comment that the practice of the clerks now is to leave claim forms with regular users to fill out by themselves. For these small claims, the layman feels

he can handle the claim form himself, and indeed, this is the feeling and experience of the clerks.

The magistrates did not fare so well with the users. 15 of 34 replying did not find the magistrate helpful in guiding them through the trial procedure; 8 of 32 replying did not feel that the magistrate was impartial. In other words, 44 percent of those replying did not find the magistrate helpful and 25 percent did not find him impartial. It should be pointed out, however, that a few of those who didn't find the magistrate helpful commented that they didn't need help in the trial procedure because of their previous experience in the court. It is unclear what significance is to be attached to these comments by the users. In the first place, during the period covered, a great many magistrates presided over the Edmonton Small Claims Court. No attempt was made to correlate the comments with the individual magistrate before whom the plaintiff appeared. Secondly, there is no way to write into a piece of legislation a direction concerning the help a magistrate must offer at the trial. It all depends upon the individuals before him, the effectiveness of his communication with these individuals and his own feeling on the amount and type of help needed. This is a very personal matter not susceptible of legislative change. Thirdly, a more significant indicator of the user's opinion about the system is his readiness to use it again and to recommend it to others.

To this comment by these users must be added my own feelings after personal observation of small claims trials in Edmonton and elsewhere. The overwhelming point is that the layman in court, with a bit of help from an understanding magistrate, can be extremely articulate and logical. He is not lost in court. Cross-examination is never handled with great skill, however, these people are able to explain their own sides of their cases very well.

(ii) Comments of Large Department Stores, Banks,
Trust and Finance Companies

While these institutions are frequent users of the Small Claims Court, the striking point is that use of the Court is exceptionally rare for them in terms of the number of claims they could make at any time. In addition, the practice in these industries varies widely. Extra-judicial means of debt collection are used to a much greater extent than judicial process. Roughly, only 1/2 to 1/10 of 1% of the outstanding accounts are ever taken to court. This is explained by various reasons: accounting practice of the firm often requires bad accounts to be written off quickly against profits, and the small claims procedure is too slow to meet the demands of this hasty write-off; extra-judicial means of debt collection--personal interviews, wage assignments, and so on--are often easier and more effective; some firms were concerned about the company's image if they used the Court too frequently; proper service of the summons on an itinerant

defendant is often difficult and to this must be added the obstacles presented by the restrictions on the territorial jurisdiction of the magistrate; prospective defendants are often judgment proof; the interest rate on the judgment of the Court is not as high as the interest rate on the outstanding account and some firms are hesitant to lose their right to future interest; and, for some finance companies, the Court cannot be used except with the authorization of out-of-town company officials, a complicated matter.

Nonetheless, all these users expressed satisfaction with the operation of the procedure when they did avail themselves of it. Some finance companies will abandon up to \$400 or more of their claim in order to bring it within the monetary limits on jurisdiction of the Small Claims Court. These firms will bring claims for as low as \$50. None expressed any feeling that the magistrates were predisposed against big businesses. For some, the summons is all they really need. Defendants pay when they see the summons. Some of the employees who represent these institutions in the Court are very familiar with the legal process and can handle garnishment easily by themselves. None of the people to whom I spoke were overly concerned by the practice in Edmonton of adjourning cases to a second appearance because they rarely had disputed cases which were adjourned. However, all expressed approval of any means which would speed up the procedure.

In conclusion, users, whether large corporations or small individuals, are generally satisfied with the small claims system. It is simple and inexpensive, which is what they need. The procedure can be used adequately by the layman without the services of a lawyer.

Results of the Public Questionnaire

Eighty-one percent of the persons questioned knew that there was a Small Claims Court. Thirty-two percent knew that a claim could be made, without the services of a lawyer, for \$4; 27 percent knew that the clerks would offer assistance in the preparation of the claim; and 26 percent replied that they knew the magistrate would assist parties in court to go through the proper procedures. These figures are astonishingly high and one suspects that the form of the question led to these results. When a man is asked "Do you know this?", his initial urge is to answer positively so as not to seem ignorant. It is probably the case that many persons questioned in the public survey answered "Yes" for this reason rather than because of knowledge. Nonetheless, a significant point is made by these figures. The existence of the court is much better known than anything about its operation. If some persons are hesitant about using the court because they do not know of the help to be had from the clerks and magistrate, then knowledge of the court's existence is insufficient.

Furthermore, the distribution of knowledge is not uniform over the range of income and education levels. In general, the higher the income level or education level, the more is known about these basic facts concerning the small claims system. The following tables illustrate this general point.

Table A

Basic Knowledge Concerning
the Small Claims Court
according to Income Level
of Residential Area

(Percentage of persons in class responding "Yes" to question)

Question	High Income Area	Medium Income Area	Low Income Area	Total Population
Did you know there was a Small Claims Court?	96%	84%	62%	81%
Did you know there was a procedure whereby you could make a claim yourself, without the help of a lawyer, for \$4?	32%	40%	24%	32%
Did you know that the clerks of the Court would help you file your claim?	32%	30%	20%	27%
Did you know that the magistrate would assist you in court to go through the proper procedures?	32%	26%	20%	26%

Table B

Basic Knowledge Concerning
the Small Claims Court
according to Personal
Income Level of Household
(Percentage of persons in class responding "Yes" to question)

<u>Question</u>	<u>Household Income Level</u>				
	\$5000 or less	\$5001 to \$10,000	\$10,001 to \$15,000	Over \$15,000	Total Population
Did you know there was a Small Claims Court?	51%	86%	94%	100%	81%
Did you know there was a procedure whereby you could make a claim your- self, without the help of a lawyer, for \$4?	17%	35%	50%	33%	32%
Did you know that the clerks of the Court would help you file your claim?	17%	28%	33%	38%	27%
Did you know that the magistrate would assist you in court to go through the proper procedures?	14%	28%	28%	38%	26%

Table C

Basic Knowledge Concerning
the Small Claims Court
according to Education Level
(Percentage of persons in class responding "Yes" to question)

<u>Question</u>	<u>Education Level</u>				
	Less than Grade 12	Grade 12 and/or Tech- nical Training	Some Uni- versity	Uni- versity Gradu- ate	Total Population
Did you know there was a Small Claims Court?	66%	92%	86%	93%	81%
Did you know there was a procedure whereby you could make a claim your- self, without the help of a lawyer, for \$4?	26%	37%	57%	21%	32%
Did you know that the clerks of the Court would help you file your claim?	19%	32%	43%	25%	27%
Did you know that the magistrate would assist you in court to go through the proper procedures?	21%	32%	43%	18%	26%

Table A indicates that knowledge concerning the basic facts of the small claims system decreases as one moves from a high income to low income residential area. The Small Claims Court's existence is known by 96 percent of those in the high income area, 84 percent of those in the medium income

area and 62 percent of those in the low income area. The number of persons knowing anything about the operation of the system is much lower in all areas than the number who are cognizant of the Court's existence. Again, however, the percentage of persons having knowledge of the system is much lower in the low income area than it is in the high income area. Thus, in response to the question "Did you know that the magistrate would assist you in court to go through the proper procedures?," 32 percent of those in the high income area said "Yes," while the percentages of yesses in the medium income area and low income area respectively are 26 percent and 20 percent.

Table B illustrates that this basic knowledge in the community declines rapidly as personal household income declines. Thus, the percentage of persons from households with less than \$5001 income who knew of the essential elements of the small claims system is much lower than the percentages of knowledgeable persons in the higher income levels. While 81 percent of all those interviewed knew that there was a Small Claims Court, only 51 percent of those with household incomes under \$5001 knew this. Again, as has been pointed out, general knowledge concerning the operation of the system is much less than knowledge of the Court's existence. However, it is also the case that the number of knowledgeable persons in an income class goes down as income level falls.

Table C is somewhat perplexing. Of those who have less than a grade 12 education, relatively fewer know the basic facts about the small claims system than the percentage of knowledgeable persons in the total population. However, this is also the case, insofar as the operation of the system is concerned, for the class of university graduates. While 93 percent of the university graduates know of the Court's existence (and only 81 percent of the total population knows this), only 21 percent of these graduates knows that the claim can be started for \$4, when 32 percent of the total population knows this. The latter position is repeated in the responses to the final two questions. Overall, Table C seems to indicate that the knowledgeable groups are those where the education level is at least a grade 12 education and/or some technical training but less than a university degree. One would want a much more exhaustive survey before concluding that university graduation is significant to lack of knowledge concerning the small claims system. Perhaps, the main significant point made by Table C is that knowledge about the Small Claims Court's existence is much less widely held by those who do not have a high school education than by those in the higher education classes. While 92 percent of those with grade 12 and/or technical training know of the Court's existence, 86 percent of those with some university and 93 percent of those with a university degree know this, only 66 percent of those with less than a grade 12 education are

aware of the Court's existence.

In sum, many people do know of the existence of the Small Claims Court. The essential elements of its operation are less widely known. The dispersion of knowledge about the Court is wider among the high income elements of the population than it is among the low income persons. More roughly, it might also be said that the better educated persons know more about the small claims system than do the less educated. This is particularly so when one compares those with less than a grade 12 education with persons who have more than a grade 12 education.

The means of knowledge about the system are varied. Only 54 percent of the 150 persons questioned volunteered the source of their information. The rest could not really say how they came to know whatever they did know about the small claims system. Roughly 3 percent had learned something about the system from a lawyer, 7 percent had used it before, 20 percent learned of it at work, 9 percent gave "a friend" as their source and 16 percent had some other source of information. The major "other" sources were the newspaper (the Edmonton Bar Association's column in the Edmonton Journal was mentioned), and the police (in the case of persons who had suffered damage in an auto accident).

There is little doubt that people in all income levels will concern themselves with small matters. If they loaned money which was not repaid, 23 percent of the people

would take "action" if the sum involved was less than \$25, 41 percent if less than \$50, 63 percent if less than \$100 and 74 percent if less than \$200. Of the 150 persons questioned, 85 percent said they would take "action" if the sum involved was \$500 or less. Fifteen percent did not respond to this question. Some of them would presumably not take action if the sum involved was \$500 or less. The "action" to be taken varies. Forty-seven percent suggested they would see a lawyer, 20 percent said they would try the Small Claims Court, 22 percent said they would merely write a letter. The balance did not suggest what course of action they would take. These figures were obtained in response to questions asked before the persons approached were told the basic facts about the Small Claims Court.

The same general pattern was repeated in response to the other two hypothetical situations posed--the personal property damage situation and the breach of contract example. The vast majority of persons would take "action" where the sum involved was less than \$100. Again, the "action" taken is mainly to see a lawyer with merely writing a letter the most favored alternative. Trying the Small Claims Court is almost as frequently suggested as merely writing a letter. It should be pointed out that many of those who consult a lawyer over a small matter will be referred to the Small Claims Court.

The threshold of "action" did not vary significantly after the persons questioned were told the basic elements of the small claims system. Roughly the same numbers would still take action at the previously suggested levels. However, in response to the question "If you had a problem now, would you try the Small Claims Court?," 80 percent said "Yes." Little significance need be attached to the actual figures stated. What is important is that given the most basic information concerning this Court, many more people would be willing to try it than is the case before they know this information. In fact, more than a few of the persons questioned concluded "People should know more about this Court."

Summary of Findings

1. The application of The Small Claims Act varies somewhat in the centres around Alberta. This is particularly so in three respects: service of the summons, disposition of the case at the first appearance and issuing of the certificates of judgment. The practice of the Edmonton Court varies in these three matters from the procedure adopted in the other centres I visited. Usually the clerks or magistrates serve the summons, in Edmonton they don't. Usually all cases are disposed of at the first appearance, in Edmonton they aren't. Usually certificates of judgment are given to both parties immediately after the trial, in Edmonton they aren't.
2. The small claims procedure is being used extensively by large and small business concerns and individuals. Roughly three-quarters of the claims concern outstanding accounts, bad cheques and default on promissory notes.
3. The plaintiffs and defendants, for the most part, are using the system themselves without employing the services of a lawyer. Users who handled their claims themselves are largely satisfied with the procedure and would use it again.
4. People are concerned with small matters and will take simple legal action on such matters if it is available. This is indicated by the vast number of very small claims actually entered in the Edmonton Small Claims Court and

the responses offered by those persons given the public questionnaire.

5. There would seem to be no real need for changes in our collection procedure at least insofar as the small claims system is concerned. In the first place, most of the cases never reach trial; they are either settled or adjourned sine die. Secondly, the users questioned report a fair degree of success in collection of their money after judgment. Failure to collect would seem to be due, not to the fault of the system, but to the penury of the defendant.
6. Two points should be noted with respect to the length of time necessary for disposition of cases in the Edmonton Court. Firstly, in almost 50 percent of the cases where at least one appearance was made, two or more appearances were needed for disposition of the claim. Secondly, nearly 50 percent of the cases where an appearance was made in Court, took 7 to 10 weeks to dispose of.
7. The existence of the Small Claims Court seems to be fairly widely known. However, the rudiments of its operation are not widely known. Knowledge about the system seems to be more widely dispersed in the wealthier and better-educated segments of the community than it is in those areas and among those people of lesser income and education.

8. Little sure indication was given of the means which can be used for dissemination of knowledge about the small claims system. Present knowledge about the system possessed by users and other members of the public came to these people in a myriad ways. Perhaps the few hints we have point to use of the newspaper and reaching people "at work."
9. It would appear that more use of the Court would be made if information about it were more widely dispersed.

Recommendations

The following recommendations are based on an amalgam of the findings from the survey of the cases in the Edmonton Small Claims Court, the public questionnaire, users' questionnaire and discussion with officials in Alberta and other provinces. The suggestions follow upon two points: firstly, the Small Claims Court can and should serve as a court primarily for the layman to use himself for those cases too small to merit the services of a lawyer; secondly, the court must fulfil both the commercial need of legal process in debt collection and the individual's need (particularly the economically disadvantaged individual) for an inexpensive legal procedure. By and large, the present system is a good one. A few changes merit consideration.

1. The monetary limit on the magistrate's jurisdiction should be the same for actions in damages as for actions in debt. Given the present rate of inflation in the Canadian economy, this equalization should take place at the \$500 level now established for debt actions. This would parallel the present small claims restrictions in the district courts. In Alberta, there is a consideration which does not present itself in the other Western provinces and Ontario. In this province, many of the magistrates with jurisdiction under The Small Claims Act are not legally trained. This means that one can have the fear that the magistrates, not

being legally trained persons, would not adequately handle an action of up to \$500 where they had to determine the amount of the damages. Several points may be made in this regard. In the first place, and this is purely a personal value judgment, I would suggest that the men selected to act as magistrates can adequately handle such cases. Secondly, there is some confusion created by the split levels in monetary jurisdiction. In some cases, the claim may be either for liquidated debt or for damages. If the plaintiff must restrict his damages claim to \$200, while he is allowed to carry his debt claim up to \$500, he is really forced into the district courts. It is far better for him to be able to sue the defendant in the Small Claims Court for up to \$500 whether his claim will succeed in liquidated debt or in damages. In addition, what happens to the defendant who is sued in debt for \$500 and would like to counterclaim in damages for \$500? His counterclaim is restricted at present to \$200. Thirdly, there is always the possibility of an appeal to the district courts if a party is dissatisfied with the decision of the magistrate. I would suggest that, as is now the case, appeals would be very rare indeed.

Another point to be considered is that if the limit on damage claims is raised, there is the likelihood of an enormous number of automobile accident cases coming

into the Small Claims Court and these cases are the most time-consuming ones. The answer to this is to increase the number of small claims magistrates. If the system can and should operate in damage claims up to \$500, the possibility of an increase in the use made of the procedure should not prevent the raising of the monetary jurisdiction.

2. The territorial jurisdiction of the magistrate should be extended. At present the plaintiff must seek out his defendant and take his action in the judicial district where the defendant resides. This limitation on jurisdiction is incompatible with the simplicity and convenience necessary in a small claims system. It is suggested that the magistrate should have jurisdiction to take cases if the defendant resides within the judicial district in which the magistrate resides or if the cause of action arose within this judicial district. This would make the system of much more value to businesses whose debtors are itinerant or whose debtors live in another part of the province. In order to keep the territorial jurisdiction within manageable bounds, it would be advisable to restrict cases in the Small Claims Court to those where the defendant resides in Alberta. Provision of a procedure for service ex juris is an unnecessary complication of the small claims system.

3. There is great benefit to be had in use of the dispute note procedure. The present practice in Edmonton of adjournment of cases to a second hearing for trial is a waste of the magistrate's and the parties' time. It is the antithesis of convenience when a plaintiff must appear twice at court for a judgment in an undefended action! The initial summons should not be to trial, but rather a summons to pay or defend. Attached to the summons should be a dispute note which the defendant must fill out and return to the clerk or magistrate if he wishes to defend the action. This is the system followed at present in the small claims procedure in the district courts. It is a good one and merits use in the small claims courts as well. The instructions for the defendant and the dispute note found in Forms N and P of the Rules of Court are models which could be adopted with some appropriate modification in The Small Claims Act. This would mean that before the trial date is set, the magistrate would know which cases will be defended and which actions will go undefended. The trial list can be established accordingly, and notices of trial sent out, so that no party will have to make a second appearance. In Calgary and outlying regions, the magistrates are now disposing of their small claims cases on the first appearance of the parties whether the cases are defended or undefended. Perhaps, the dispute

note procedure would unnecessarily complicate the present system for them. If this is so (though there is merit, even for them, in knowing the status of actions before trial), the dispute note could be reserved for use in the centres where parties must now make more than one appearance. In other words, the pre-trial procedure would vary depending upon the location of the court. This does complicate the Act, but it simplifies the system which is the purpose of the Act. A small claims procedure must provide for one-shot trials. Much of the benefit of a simplified system is lost when parties and magistrate must waste valuable time in a first appearance which simply establishes whether or not the action will be defended.

Some users of the Edmonton Court expressed the opinion that the adjournment after the first appearance was a valuable thing. It provided an additional opportunity for discussion with the defendant to seek a means of out-of-court settlement. Several points may be made in this regard: the majority of users, while not overly annoyed by the present delay, expressed hearty approval for a procedure which would do away with the need for several court appearances; secondly, it is always possible for a plaintiff who wishes more time for discussion, to ask for an adjournment which will be granted by the magistrate.

Some of the magistrates expressed the opinion that the dispute note would not work well in a small claims system where the particulars of the contention often are not really known until the appearance in court. It is suggested that this comment does not destroy the utility of the dispute note. The defendant, who does not understand the claim, will dispute it and appear in court. In Ontario and British Columbia, where small claims are no more carefully worded than in Alberta, the dispute note procedure works very well in their small claims systems under The Division Courts Act, R.S.O. 1960, c. 110, as amended, and in the Small Debts Courts Act, R.S.B.C. 1960, c. 359, as amended.

Of course, much of the need for this proposal would disappear if it were possible for the Edmonton Small Claims Court to dispose of all its claims on the first appearance. It cannot be stressed too strongly that an inexpensive, simple small claims procedure must not involve the unnecessary delay presented by an adjournment for a second appearance. Where this is the practice in a leading centre, some change in the legislation or in the administration of the present Act is called for.

4. A defendant should be allowed to pay into court an amount to satisfy the plaintiff's claim at any time before the trial. If the plaintiff carries on and fails to recover more than this amount, he should bear the costs of the

action and pay to the defendant an appropriate amount as directed by the magistrate. This seems to be the effect of the present sections 15(2) and (4). However, there is the time limit for payment of eight days before the date of the hearing set out in section 15(1). There is no great benefit to be had by retaining this time limit, whereas there is advantage to be had in removing it. Settlement of small claims is a much more informal business than is the settlement of larger ones. Parties should be permitted to haggle to the courtroom door and then perhaps settle or have the defendant pay money into court in settlement. Time limits are for lawyers. Insofar as is possible, laymen should have to worry about only one time--the date of the trial.

5. The scale of fees should be amended in two ways. Firstly, there should be a sliding scale of charges for issuing the summons depending on the value of the claim. This is particularly so if the limit on damage claims is raised to \$500. There is little reason for a plaintiff to pay the same initial fee if his claim is for \$25 as he would pay if his claim is for \$500. Secondly, though the same court must serve both a commercial need and an individual's need for an inexpensive judicial procedure, it is not essential that both needs be fulfilled at the same cost. The corporate user, who makes frequent use of the court in preference to collection agencies

and the like, can and should pay more for the valuable services performed by the Small Claims Court. It is very difficult to establish a perfectly satisfactory means of separating out the commercial users who should pay more for the service and the individual in need of an inexpensive process. However, this difficulty of perfection should not prevent some valid distinction being made. I would suggest that plaintiffs who are business entities--corporations and partnerships--should pay larger fees than other users. This would include large retail stores and most small ones, banks, finance and trust companies. The suggested scale of fees for issuing the summons is as follows:

<u>Amount of Claim</u>	<u>Business Entities</u>	<u>Others</u>
\$0 - \$100	\$2.00	\$1.00
\$101 - \$200	\$4.00	\$2.00
\$201 - \$300	\$6.00	\$3.00
\$301 - \$400	\$7.50	\$3.50
\$401 - \$500	\$9.00	\$4.00

It is most convenient if the deposit taken at the outset by the magistrate covers the basic fees--issuing the summons, hearing and determining the case and the certificate of judgment. The present \$4 deposit covers these items. If the sliding scale of fees is adopted, the deposit required should be changed accordingly. The new deposit requirements would then be:

<u>Amount of Claim</u>	<u>Business Entities</u>	<u>Others</u>
\$0 - \$100	\$4.50	\$3.50
\$101 - \$200	\$6.50	\$4.50
\$201 - \$300	\$8.50	\$5.50
\$301 - \$400	\$10.00	\$6.00
\$401 - \$500	\$11.50	\$6.50

6. Section 30(1) of the present Act provides that immediately after the judgment is rendered, the magistrate shall prepare a certificate of judgment and furnish a copy to each party to the action. This is the best procedure to follow. It isn't now in Edmonton. As has been said before, in Edmonton the defendant is furnished immediately with a copy of the certificate but the plaintiff must wait, usually for a period of 30 days, for his copy. Particularly for the commercial users of the small claims system, time is of the essence in their actions. It is not too unusual an occurrence for the judgment debtor to fly the jurisdiction between the time judgment is rendered and the certificate issued to the plaintiff. The plaintiff needs the certificate immediately so that it can be filed in the District Court and execution proceedings can be commenced while the defendant can be reached. This proposal requires no change in the legislation, merely compliance with the existing provisions.
7. There is almost universal agreement among the magistrates to whom I spoke that section 31 on examinations in aid

of execution should be deleted. In the first place, this power has almost never been exercised by the magistrates. Secondly, this provision is, in a way, inconsistent with the scheme of the small claims system whereunder the District Court collection procedures are used after judgment is received. There is really no need for an additional post-judgment proceeding in the Small Claims Court. The magistrates do not want it and do not use it.

8. Above all, it must be remembered constantly that the small claims system is intended for and is used by laymen. There is a need for it and it can work very well if properly applied. Perhaps more can be done, in this regard, along two lines. Firstly, there should be a wider dissemination of information on the court's existence and operation. Some people with small problems may never obtain redress because they feel that the legal expenses would be too high. The Court's operation should be explained in any literature on consumer education. Some means should be found of making the system's existence known to the lower income groups--pamphlets can be distributed at places of employment, the legal aid office established in poor districts should give information concerning the Small Claims Court, more mention of it can be made in the newspaper in columns such as the Edmonton Bar Association's contribution in the Edmonton Journal. The crucial point is that this

system will not fulfil its role adequately if it is not used because of ignorance of its services.

Secondly, there could be more information in simple, layman's terms given to users of the system. A very short pamphlet on pre-judgment procedures could cover the necessities of service and the evidentiary requirements at trial. This latter is a particularly important need. The layman comes to court armed with what he thinks is adequate evidence to prove his case. At trial he is met by the rules of evidence about which he has never heard. Some very simple advance information on the evidence required would be welcomed. This would simplify the magistrate's job at trial. The defendant, too, should be supplied with such information along with the summons.

Appendix I

1968

CHAPTER 93

An Act respecting Small Claims

(Assented to April 25, 1968)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

- | | |
|-------------|---|
| Short title | 1. This Act may be cited as <i>The Small Claims Act</i> . |
| Definitions | 2. In this Act,
(a) "defendant" means the person to whom a summons under this Act is directed;
(b) "plaintiff" means a person at whose instance a summons is issued under this Act;
(c) "prescribed" means prescribed by the regulations under this Act. |

Jurisdiction of Magistrates

- | | |
|--------------|--|
| Jurisdiction | 3. (1) Subject to the restrictions and conditions contained in this Act, a magistrate has jurisdiction to try and adjudicate upon
(a) any claim
(i) for debt (whether payable in money or otherwise) where the amount claimed does not exceed \$500, and
(ii) for damages (including damages for breach of contract) where the amount claimed does not exceed \$200,
and
(b) any counterclaim
(i) for debt (whether payable in money or otherwise) where the amount counterclaimed does not exceed \$500, and
(ii) for damages (including damages for breach of contract) where the amount counterclaimed does not exceed \$200.
(2) Where it appears that
(a) the claim of a plaintiff, or |
|--------------|--|

(b) the counterclaim of a defendant is in excess of the appropriate amount specified in subsection (1) the plaintiff or the defendant, as the case may be, may, in writing signed by him, abandon that part of his claim that is in excess of the jurisdiction of the magistrate and, in that event, he forfeits the excess and is not entitled to recover it in any other action.

**Jurisdiction
limited**

4. (1) A magistrate does not have jurisdiction to hear or adjudicate upon a claim or counterclaim

- (a) in which the title to land is brought into question, or
- (b) in which the validity of any devise, bequest or limitation is disputed, or
- (c) for malicious prosecution, false imprisonment, defamation, criminal conversation, seduction or breach of promise of marriage, or
- (d) in replevin, or
- (e) against a magistrate, justice of the peace or other peace officer for any thing done by him while executing the duties of his office, or
- (f) by a municipal or school authority for the recovery of taxes, other than taxes imposed in respect of the occupancy of or an interest in land that is itself exempt from taxation.

(2) Where in proceedings before a magistrate a defence or counterclaim of the defendant involves a matter beyond the jurisdiction of the magistrate,

- (a) the defence or counterclaim does not affect the competence or the duty of the magistrate to dispose of the whole matter in controversy so far as it relates to the claim of the plaintiff and the defence thereto, but
- (b) no relief exceeding that which the magistrate has jurisdiction to administer shall be given to the defendant upon the counterclaim.

**Territorial
Jurisdiction**

5. (1) A magistrate has jurisdiction to try and adjudicate upon any matter under this Act only within the limits of the judicial district in which he resides.

(2) A magistrate does not have jurisdiction to try or to adjudicate upon any matter under this Act unless, at the time the summons is issued, the defendant or one of the defendants resides or carries on business within the judicial district in which the magistrate resides.

(3) Where a defendant is a municipal or school authority the claim may be tried in any judicial district

- (a) in which all or any part of the area of that authority is included, or

(b) in which any other defendant resided or carried on business at the time the summons was issued.

(4) Notwithstanding anything in this section, any magistrate may, upon the request of the Attorney General, try and adjudicate upon any matter under this Act in any judicial district in which at the time of the issue of the summons the defendant or some one of the defendants resided or carried on business, without regard to the place of residence of the magistrate.

Interest bars
magistrate

G. A magistrate does not have jurisdiction to try or adjudicate upon any matter in which he has or has had an interest.

Summons

Application
for and
issue of
summons

7. (1) A person who has a claim which may be dealt with under this Act may, in person or by his solicitor or agent, apply for the issuance of a summons by

(a) delivering a statement of the particulars of his claim, in the prescribed form, and

(b) paying the deposit required under section 8, to a magistrate having jurisdiction with respect to the claim.

(2) Where an application is made in accordance with subsection (1), the magistrate

(a) may issue a summons, in the prescribed form, to which he shall attach a copy of the particulars of the claim, and

(b) shall cause the summons, with a copy of the particulars attached, to be served upon the defendant.

(3) Notwithstanding subsection (2), a magistrate may refuse to issue a summons if,

(a) by reason of the distance between the residences of the proposed parties to the proceedings, or

(b) for any other reason

he considers that it is not in the interest of any party that the claim be adjudicated upon under this Act.

(4) The refusal of a magistrate to issue a summons does not prejudice the right of the person having a claim to proceed thereon in any other manner by law.

Deposit with
summons

8. (1) The plaintiff shall before the summons is issued, deposit with the magistrate the sum of \$4 by way of a deposit on the taxable fees of the magistrate and his bailiff.

(2) When the defendant lives farther than 20 miles from the place of trial the magistrate in his discretion may, before the summons is issued, require the plaintiff to pay as a deposit an additional sum calculated at the prescribed rate

a mile for the number of miles return between the defendant's residence and the place of trial.

(3) The amount of the total deposit with the particulars thereof shall be endorsed on the summons and copy by the magistrate, and if it is not actually paid and so endorsed the summons and the service thereof are void.

(4) The deposit paid pursuant to subsection (1) shall be retained by the magistrate and there shall be no refund on any unused portion thereof.

(5) The deposit paid pursuant to subsection (2), less the fees of the bailiff, shall be paid by the clerk of the district court in the case of an appeal and by the magistrate in the case of no appeal

(a) to the plaintiff, if final judgment is given in favour of the plaintiff, or

(b) to the defendant for his personal expenses in attending upon the trial if the plaintiff discontinues or if judgment is for any cause given in favour of the defendant.

Date of
trial

9. (1) The date fixed by the summons for trial shall not be more than 60 days from the date of the issue of the summons.

(2) Notwithstanding subsection (1), a summons shall be served at least 10 days before the date appointed therein for trial and if a summons is not so served no trial shall take place on the appointed day unless the defendant consents thereto.

(3) Where a summons is not served within the time prescribed by this section, a magistrate may upon application, issue a new summons in accordance with this Act.

Counterclaims

Counter-
claims

10. (1) A defendant who wishes to assert a counterclaim which may be dealt with under this Act may

(a) deliver a statement of the particulars of his counterclaim, and

(b) pay the prescribed fees,
to the magistrate who issued the summons and the magistrate shall thereupon cause a copy of the statement of particulars to be served upon the plaintiff.

(2) When, at a trial, a defendant asserts a counterclaim and the plaintiff has not been served with a copy of a statement of particulars pursuant to subsection (1) at least six days before the date fixed for the trial, the magistrate may, if in his opinion the plaintiff has been taken by surprise, adjourn the trial upon such terms as to costs as the magistrate considers just.

Service

Service of documents

11. (1) Except as to subpoenas, service of all documents may be made

- (a) by any adult literate person upon the person to be served, either personally or by leaving a copy for him at his most usual place of abode with some resident thereof apparently 16 years of age or older, or
- (b) by mailing the copy to the person to be served by double registered mail to his last known post office address, in which case service shall be deemed to be effected at the time the double registered letter is delivered by an official of the post office to the person to be served or to any person receiving it on his behalf.

(2) In any action by or against a partnership, service of a document upon one of the partners shall be deemed to be service upon all the partners.

(3) In an action by or against a joint debtor, service of a document upon one of the joint debtors shall be deemed to be service upon all the joint debtors.

(4) Service of a document upon a municipal or school authority may be made by serving the mayor, reeve, chairman, clerk, secretary or secretary-treasurer.

(5) Service of a document upon any other corporation may be made

- (a) by serving the president, head officer, a director or the secretary, or
- (b) by serving a manager, agent or officer of the corporation transacting business in the judicial district in which the action is to be tried, or
- (c) by leaving it or sending it by double registered mail to the registered office of the corporation.

Service of subpoena

12. (1) A person may serve a subpoena by showing it to the witness and delivering to him a copy thereof with his witness fee.

(2) A magistrate may issue subpoenas to witnesses in the prescribed form to be served in the Province, and a person subpoenaed on being tendered the prescribed fees shall attend in accordance with the terms prescribed by the subpoena.

(3) A subpoena issued by a magistrate pursuant to this Act has the same effect as a notice to attend given in a proceeding in the district court and any witness not attending in obedience thereto is liable to attachment and is also liable in all other respects as for disobedience to such a notice.

Service on
Sunday or
holiday

13. The service of any document on a Sunday or on any other holiday is void.

Proof of
service

14. The service of any document may be proved

- (a) by the oral testimony of the person serving it, or
- (b) by affidavit of service in the prescribed form, or
- (c) by an affidavit of service proving the mailing by double registered mail and exhibiting the acknowledgment of receipt of the double registered letter purporting to be signed by the person to be served or by any person receiving the letter on his behalf, or
- (d) where the service was effected by the magistrate or an officer of his court by double registered mail, by producing the acknowledgment of receipt of the double registered letter purporting to be signed by the person to be served or by the person receiving the letter on his behalf.

Tender and Payment

Tender and
payment

15. (1) A defendant may, not later than eight days before the date of the hearing, pay to the magistrate a sum of money to satisfy the plaintiff's claim and the costs of summons and service.

(2) Where, before the issue of a summons, the defendant has offered the plaintiff a sum of money to satisfy the plaintiff's claim which was refused the defendant may before or at the hearing pay that sum to the magistrate.

(3) The magistrate shall upon payment being made to him under either subsection (1) or subsection (2), otherwise than at the hearing, cause to be served upon the plaintiff a notice in writing of the payment stating the date and the amount thereof paid in respect of the claim and costs separately.

(4) If the plaintiff proceeds with the claim

- (a) after notice of payment made under either subsection (1) or subsection (2), or
- (b) after payment made at the hearing under subsection (2),

and does not recover a greater sum than the amount paid in respect of the claim he is liable to pay to the defendant such costs as the magistrate directs.

Trial

Place of
trial

16. The room or place in which the magistrate sits to try any matter under this Act is an open and public court to which the public generally shall be given access so far as it can conveniently be given them.

Time of
trial

17. (1) Where a summons is served in accordance with this Act, the cause shall be tried on the return date of the summons unless on that date the magistrate, upon application, adjourns the trial to a subsequent date, in which case the trial shall commence on the adjourned date.

(2) Where a magistrate adjourns a trial pursuant to subsection (1), he may assess such costs as he considers just against any party requesting the adjournment.

Change of
magistrates

18. (1) Subject to section 5, where a magistrate issues a summons under this Act any other magistrate may subsequently continue the proceedings as if the latter magistrate had himself issued the summons.

(2) Where a trial has commenced and the presiding magistrate is unable for any reason to complete the proceedings,

(a) any magistrate residing in the same judicial district as the first magistrate, or

(b) any magistrate requested to act by the Attorney General,

may take up the proceedings at the point at which they have been left off by the first magistrate, and the succeeding magistrate, according to his opinion as to what is required to ensure justice,

(c) may continue the trial to completion, or

(d) may recommence the trial.

Representa-
tion of
party

19. At any stage of proceedings under this Act

(a) a barrister and solicitor, or

(b) a person not prohibited by the magistrate, may appear on behalf of a party.

Parties
confined to
particulars

20. On the trial of any action the parties shall be confined to the particulars set out in the statements delivered to the magistrate unless good cause is shown, in which case the magistrate may allow a party to amend particulars upon such terms as to costs and adjournment as he considers just.

Lost
negotiable
instrument

21. (1) Where a claim or counterclaim is founded in whole or in part upon a negotiable instrument the magistrate may order that the loss of the instrument be not set up as a defence if an indemnity by way of bond is given by the plaintiff to the satisfaction of the magistrate, is given by the plaintiff to the defendant or by the defendant to the plaintiff to protect the defendant or the plaintiff, as the case may require, against the claim of any other person upon the negotiable instrument.

(2) The bond may be in the prescribed form with two sufficient sureties to the satisfaction of the magistrate.

Admission of
liability

22. (1) A clerk of the court in which a cause is pending, may at any time take an admission, indebtedness or liability, as the case may require,

(a) in the case of a claim, from a defendant, or

(b) in the case of a counterclaim, from a plaintiff,

and upon the production of the admission to the magistrate and proof thereof by the oath of the clerk, the magistrate may order that judgment be entered thereon.

(2) An admission taken pursuant to subsection (1) shall be in the writing of the person making it or the writing of some person acting on the direction of the person making it and be witnessed by the clerk of the court.

Taking of
evidence

23. (1) The evidence given at a trial shall be given under oath and a person giving evidence is subject to cross-examination and re-examination.

(2) A complete record of the evidence of a trial shall be taken

(a) by a court reporter appointed pursuant to the Consolidated Rules of the Supreme Court of Alberta, or

(b) by means of a sound recording machine as provided under *The Mechanical Recording of Evidence Act*.

(3) If for any reason the evidence given at a trial cannot be taken as prescribed in subsection (2), the presiding magistrate shall cause the evidence of each witness to be taken down in writing in a summary fashion, and

(a) the magistrate shall read to each witness the summary so taken of his own evidence,

(b) the witness shall subscribe his signature to the written summary of his own evidence, and

(c) the magistrate shall certify thereon that it is a summary of the evidence given by that witness at the trial.

Withdrawal
of claim

24. A plaintiff may withdraw his claim before trial by delivering a notice in writing to that effect to the magistrate who shall thereupon notify the defendant thereof in writing, or the plaintiff may consent to judgment for the defendant, and in either case the defendant is entitled to such costs as the magistrate orders.

Non-
appearance
of plaintiff

25. (1) Where a plaintiff fails to appear for trial the magistrate may in his discretion, dismiss the plaintiff's claim with costs or he may adjourn the trial to a later date.

(2) If a magistrate dismisses a plaintiff's claim pursuant to subsection (1), he shall not give judgment on any counterclaim asserted by the defendant until the defendant has presented his case in respect of the counterclaim

- (a) by the oral evidence given under oath of the defendant and any witnesses he may have, or
- (b) by means of affidavit evidence where the magistrate is satisfied that oral evidence cannot for special good reason be presented to the court.

Non-
appearance
of defendant

26. (1) Where a defendant fails to appear for trial the magistrate may in his discretion allow the plaintiff to prove his claim in the same manner that a defendant may prove a counterclaim under subsection (2) of section 25, or the magistrate may adjourn the trial to a later date.

(2) Where a plaintiff proves a claim pursuant to subsection (1) the magistrate may order the defendant to pay such costs as the magistrate considers just.

(3) Where a defendant fails to appear for trial the magistrate may in his discretion dismiss with costs any counterclaim that the defendant has asserted.

Judgment and Execution

Judgment

27. The magistrate shall, as soon as possible after the completion of the trial, pronounce his decision in open court, but if he is not prepared to give his decision at the completion of the trial he may postpone judgment until such time as he finds it convenient to give it, and he may for that purpose adjourn the case to a fixed date.

Settling-off
claim and
counter-
claim

28. (1) Subject to this section, a counterclaim shall, to the extent of the amount established in respect thereof, be applied in satisfaction of any claim established by the plaintiff.

(2) Where a counterclaim is established that exceeds the amount established by the plaintiff in his claim, the court shall give judgment in favour of the defendant in the amount of the excess.

(3) Where the counterclaim established is less in amount than the established claim of the plaintiff, the court shall give judgment in favour of the plaintiff for the difference.

(4) Where the defendant's established counterclaim exceeds \$500 in debt or \$200 in damages, the defendant may

- (a) abandon so much of his established counterclaim as exceeds \$500 in debt or \$200 in damages, as the case may be, and obtain judgment in his favour for the \$500 or \$200 established, or
- (b) apply so much of his established counterclaim as is necessary to satisfy any claim established by the plaintiff and then sue for the balance in any court of competent jurisdiction.

(5) Where at a trial both a claim and a counterclaim are established, the court may make such order as to costs as

it considers just, and where costs are awarded for and against both the plaintiff and defendant the court shall make an order for a net amount of costs in favour of the party entitled thereto.

Judgment
against
partnership

29. When a partnership is described by the firm name, the magistrate shall require the individual names of the partners whether plaintiffs or defendants to be disclosed on oath

(a) by the person appearing on behalf of the partnership, or

(b) by production of a certified copy of the certificate of registration of the partnership,

and shall endorse the individual names upon the certificate of judgment.

Certificate
of judgment

30. (1) Where a magistrate renders a judgment under this Act, he shall immediately thereafter prepare a certificate of judgment in the prescribed form and shall furnish a copy of the certificate of judgment to each party to the action.

(2) A copy of the certificate referred to in subsection (1) is admissible in evidence as *prima facie* proof of the facts certified to therein, in any court dealing with a subsequent proceeding relating to the cause of the action, without proof of the authenticity of the magistrate's signature or any other proof.

(3) The person in whose favour judgment is given, after paying the prescribed fee, may file the certificate of judgment in the office of the district court in the judicial district in which the magistrate resides and thereupon it shall be entered as a judgment of the court, and execution and garnishee summons may be issued thereon according to the ordinary procedure of the district court.

Summons
to appear
for ex-
amination

31. (1) At any time after judgment and whether or not the judgment debtor has been previously examined as to his estate or means, the magistrate

(a) upon the application of the judgment creditor, and

(b) upon being satisfied that it is proper to do so on account of any default in payment on the judgment or an alteration in the circumstances of the debtor,

may issue a summons in the prescribed form requiring the debtor to appear before him for examination at a time and place set out in the summons.

(2) When a judgment debtor appears in answer to a summons issued under subsection (1), he may be examined with respect to all matters touching his estate and means, and in particular, but without limiting the generality of the foregoing, he may be examined

- (a) as to the means he has of paying off the amount of the judgment,
 - (b) as to any change in the nature or amount of his estate or income since the summons which resulted in the judgment was issued, and
 - (c) as to the disposal of any property which he has made since the summons which resulted in the judgment was issued.
- (3) An examination as to the judgment debtor's means shall be held in private and no person other than the magistrate, the court officers, the judgment creditor and the judgment debtor and their solicitors shall be allowed to be present.

Appeals

Right of
appeal

32. Any party to an action may appeal the decision of the magistrate to a judge of the district court of the judicial district in which the trial was held.

Manner of
appealing

33. (1) Where an appeal is taken, the appellant shall
- (a) prepare a notice of appeal in writing setting forth the grounds of appeal,
 - (b) cause the notice of appeal to be served upon
 - (i) the magistrate from whom the judgment is appealed or such other person as the district court directs,
 - (ii) the respondent or such other person as the district court directs, and
 - (iii) any other person that the district court directs, within 30 days after the judgment was pronounced,
 - (c) file in the office of the clerk of the district court
 - (i) the notice of appeal referred to in clause (a), and
 - (ii) an affidavit of service of the notice of appeal, not later than seven days after the last day for service of the notice of appeal upon any parties served pursuant to clause (b), and
 - (d) deposit with the magistrate, before the expiration of
 - (i) the period fixed by clause (c), or
 - (ii) any period resulting from an extending order made under subsection (2), where any such order is made,
 security for costs in a sum not to exceed \$50 or such other security as the magistrate approves pursuant to subsection (3).
- (2) The district court may, upon application made before or after the expiration of the periods fixed by clauses

(b) and (c) of subsection (1), fix a further period not exceeding 30 days from the date of the extending order, within which the service and filing referred to in clauses (b) and (c) of subsection (1) may be effected.

(3) The magistrate may, instead of cash security, accept security by way of bond of the appellant and at least one other person in the sum of \$100 conditioned upon the due payment by the appellant of all costs that may be ordered to be paid by him, and the bond may be in the prescribed form.

Transcript
of evidence

34. (1) An appellant shall at his own expense, supply copies of the transcript of the evidence taken at trial, to the district court and to all other parties to the appeal.

(2) The transcript supplied pursuant to subsection (1)

(a) shall be certified to as true copies of evidence by the official court reporter who prepares it, and

(b) shall be provided to the required parties at least three days before the hearing of the appeal.

Dismissal
of appeal

35. (1) Where an appellant fails to comply with the requirements of subsection (1) of section 33, the appeal is automatically dismissed.

(2) Where an appellant fails to provide a transcript as required by section 34, the appeal court may upon application dismiss the appeal unless it is of the opinion that the appellant is not responsible for failing to do so.

(3) When an appeal is dismissed pursuant to subsection (1) or (2), the appeal court may make such order as to costs as it considers just.

Effect
of appeal

36. Notwithstanding anything in this Act, an appeal does not operate as a stay of execution or other proceedings under the decision appealed from unless

(a) the security for costs required by clause (d) of subsection (1) of section 33 is deposited within the time fixed by clause (b) of subsection (1) of section 33, and

(b) a stay of execution or other proceedings is ordered by a judge of the district court upon application therefor.

Disposition
of security
for costs

37. When an appellant deposits the security for costs required under this Act, the magistrate shall thereupon transmit to the clerk of the district court the amount of money, or the bond taken as security for costs, together with the record of the evidence in the cause and all other documents in his possession connected with the case.

Time of
appeal

38. (1) Where an appellant has complied with sections 33 and 34, the district court shall set down the appeal for

hearing at a regular sitting and the clerk of the court shall post in a conspicuous place in his office, a notice of every appeal that has been set down for hearing and notice of the time when it will be heard.

(2) No appeal shall be set down for hearing at a time that is less than 10 days after the time when service was effected upon the respondent of the notice of appeal referred to in section 33 unless the parties or their counsel or agent otherwise agree in writing.

**Evidence
on appeal**

39. (1) Upon the hearing of the appeal the record of the evidence which the appellant has provided pursuant to section 34 shall be read and the matter in appeal shall be decided upon such evidence.

(2) Notwithstanding subsection (1), where the district court is satisfied that the evidence available from the trial magistrate's court is not complete, the court shall order that the appeal be heard as a trial *de novo*.

**Adjourn-
ment**

40. The district court may adjourn the appeal from time to time as circumstances require and may make such order as seems just in respect of witness fees and other costs.

**Decision
on appeal**

41. (1) The district court

(a) shall hear and determine the matter of the appeal, and

(b) shall make such order thereon with or without costs to either party, including costs of all proceedings previous to the appeal, as it considers just.

(2) The decision of the district court is final and without further appeal.

**Entry of
judgment**

42. A party to the appeal may, upon paying the prescribed fee to the clerk of the district court, have the judgment entered as a judgment of the court and execution and garnishee summons may be issued thereon in accordance with the ordinary procedure of the court.

Costs

43. (1) Where a solicitor acts for a party on an appeal the court may allow, in addition to other costs assessed, a sum for solicitor's fee not to exceed

(a) in debt actions

(i) undefended—10%, or

(ii) defended —20%,

and

(b) in damage actions—25%,

the percentage to be calculated as against the defendant on the amount of the judgment recovered and as against the plaintiff on the amount claimed.

(2) Notwithstanding subsection (1), in no case shall the fee allowed be less than \$5.

Records of
magistrate

44. A magistrate shall keep a record of all processes issued by him under this Act with the date and names of the parties and the judgments rendered, as well as a statement of all moneys received and the application thereof.

Offence
and penalty

45. A magistrate who fails to pay over any moneys or to make any return required by this Act to be so paid over or made is guilty of an offence and liable on summary conviction to a fine of not less than \$5 nor more than \$100, and in default of payment forthwith to imprisonment for a term not exceeding 30 days.

Recovery
of money

46. Money paid by or on behalf of any person to a magistrate by virtue of this Act may, if detained by the magistrate after demand by the party entitled thereto, be recovered with treble costs by an action in the district court.

Validity of
proceedings

47. No proceeding under this Act shall be held invalid for informality if there has been a substantial compliance with the requirements of this Act.

Rules of
Court

48. Where anything necessary for carrying out the objects of this Act is omitted herein or in the regulations hereunder, the remedies, practice and procedure of the Consolidated Rules of the Supreme Court of Alberta may be applied.

Regulations,
fees and
forms

49. The Lieutenant Governor in Council

- (a) may make regulations not inconsistent with this Act,
- (b) may prescribe a schedule of fees to be charged for various things required to be done under this Act, and
- (c) may prescribe forms required for use under this Act.

Repeal

50. (1) Subject to subsection (2), *The Small Debts Act* is repealed.

(2) Notwithstanding subsection (1), a matter pending under *The Small Debts Act* at the time this Act comes into force may thereafter be completed as if *The Small Debts Act* had not been repealed.

Coming
into force

51. This Act comes into force on the first day of July, 1968.

INDEX

SMALL CLAIMS ACT

1968, c. 93

Abandonment

- . claim, of3(2)
- . part of counterclaim.....28(4)(a)

Act

- . coming into force of51
- . former, repeal of50
- . omissions, remedying48
- . short title1
- . substantial compliance with,
 sufficiency47

Action

- . moneys from magistrate, for46

Adjournment

- . appeal—see Appeal from magistrate
- . awaiting judgment, while27
- . hearing, of17, 25(1)
- . . appeal, of40
- . . non-appearance of defendant,
 on26
- . . non-appearance of plaintiff, on 25

Affidavits

- . service, of14

Agent—see also Solicitor

- . application for issue of
 summons7(1)
- . representation of parties by19

Appeal from magistrate

- . adjournment of40
- . application of plaintiff's deposit
 on8(5)
- . costs43
- . decision on41
- . evidence39
- . dismissal of35
- . effect of36
- . entry of judgment42
- . hearing—see Hearing
- . manner of33
- . right of32
- . security for costs37
- . time of38
- . transcript of evidence for34

Attachment

- . disobeying subpoena, for12(3)

Attorney General

- . adjudication at request of5(4)
- . substitution of magistrate..18(2)(b)

SMALL CLAIMS ACT—Con.

SEC.

Bond

- . plaintiff on lost negotiable
 instrument, of21
- . security for appeal, as33(3)
- . . transmission to clerk37

Certificate of judgment

- . magistrate, of30

Claim

- . admission of22
- . amendment of20
- . jurisdiction according to3, 4
- . lost negotiable instrument, on21
- . payment into court by defendant..15
- . withdrawal of24

Consolidated Rules of the Supreme Court of Alberta

- . application of48

Corporation

- . service upon11(5)

Costs

- . adjournment, upon...17(2), 25(1),
 26(2)
- . appeal, of41(1)(b), 43
- . . adjournment40
- . counterclaim, for28(5)
- . debt paid into court, where..15(3, 4)
- . dismissal of appeal35(3)
- . dismissal of claim, on ..25(1), 26(3)
- . withdrawal of claim, on24

Counterclaim

- . application of28
- . costs for28(5)
- . jurisdiction according to3, 4
- . lost negotiable instrument, on ..21
- . proving of25(2)
- . statement and notice of.....10

Cross-examination

- . parties and witnesses23(1)

Debtor

- . examination re means of payment.31

Defendant

- . admission of claim22
- . defined2(a)
- . non-appearance of26
- . venue according to residence
 of5(2, 3)

Definitions2

INDEX

SMALL CLAIMS ACT— <i>Con.</i>	SEC.	SMALL CLAIMS ACT— <i>Con.</i>	SEC.
Deposit		Holiday	
. plaintiff, by	8	. service on	13
. security for appeal, as 33(1)(d), (3)		Informality	
District		. proceedings not affected by	47
. jurisdiction within	5	Interest	
District court		. magistrate having, not to hear	
. appeal to—see Appeal from magistrate		case	6
. filing of judgment certificate in 30(3)		Joint debtors	
Documents		. service on	11(3)
. transmission to clerk on		Judgment	
appeal	33(1)(c), (2), 37	. absence of defendant, in	26
Endorsement		. application of plaintiff's deposit	
. deposit on summons	8(3)	upon	8(5)
Evidence		. certificate—see Certificate of judgment	
. appeal, upon	39(1)	. debtor, examination of	31
. certificate of judgment as ..	30(2, 3)	. defendant with consent of plaintiff,	
. counterclaim to be supported		for	24
by	25(2)	. entry of	42
. service, of	14	. postponement	27
. taking of	23	. pronouncement	27
. transcript of, for appeal	34	Jurisdiction	
. failure to provide	35(2, 3)	. magistrate, of	3-6
Examination		Lieutenant Governor in Council	
. debtor re means of payment	31	. regulations, fees and forms by	49
. witnesses and parties	23(1)	Limitation	
Execution		. jurisdiction, on	4
. issue of	42	Magistrate	
. certificate of judgment, on ..	30(3)	. appeal—see Appeal from magistrate	
Extra-territorial jurisdiction		. interest in case, with, not to sit ..	6
. magistrate, of	5(4)	. jurisdiction of	3-6
Fees		. penalty for default of	45
. schedule of	49(b)	. records of	44
Firm		. refusal to issue summons	7(3, 4)
. judgment certificate against	29	. substitution for hearing	18
Forms		Mechanical Recording of Evidence Act	
. use under Act, for	49(c)	. referred to	23(2)(b)
Garnishee		Mileage	
. summons	42	. deposit by plaintiff	8(2)
. issue on certificate of		Monies	
judgment	30(3)	. magistrate to account for	44-46
Hearing		Municipal or school authority	
. adjournment—see Adjournment		. jurisdiction where	
. appeal, of	41	defendant	4(1) (f), 5(3)
. adjournment	40	. service on	11(4)
. time for	38	Negotiable instrument	
. trial de novo, as	39(2)	. claim or counterclaim on lost	21
. date of	9(1, 2), 17, 25(1)		
. parties confined to particulars			
of claim	20		
. place to be open to public	16		
. postponement of	9(3)		
. representation of parties	19		

INDEX

SMALL CLAIMS ACT— <i>Con.</i>	SEC.	SMALL CLAIMS ACT— <i>Con.</i>	SEC.
Notice		Service	
. appeal, of	33	. documents	11
. counterclaim	10	. notice of appeal	33(1)(b), (2)
. withdrawal of claim	24	. notice of counterclaim	10
Order—see Appeal from magistrate		. proof of	14
Parties		. subpoena, of	12
. appearance for	19	. Sundays or holidays	13
Partners		Set-off	
. judgment and execution against	29	. counterclaim against claim	28
Partnership		Solicitor	
. judgment certificate against	29	. appearance for parties	19
. service on	11(2)	. costs of appeal with	43
Payment		Stay of execution	
. debt into court, of	15	. appeal operates as, when	36
Penalties		Subpoena	
. magistrate for default	45	. service and effect	12
Plaintiff		Summons	
. admission of counterclaim	22	. debtor for examination	31
. defined	2(b)	. deposit with	8
. deposit by	8	. proceedings commenced by	7
. non-appearance by	25	. refusal to issue	7(3, 4)
Postponement		. service of	7(2)(b), 9(2, 3)
. hearing, of	9(3)	Sunday	
Prescribed		. service on	13
. defined	2(c)	Tender	
Records		. debt by defendant, of	15
. magistrate to keep	44	Territorial jurisdiction	
Recovery		. magistrate, of	5
. moneys from magistrate, of	46	Time	
Refusal		. appeal, for	33, 38
. issue of summons	7(3, 4)	. hearing	9(1)
Regulations		. supplying transcript on appeal,	
. Lieutenant Governor in Council,		for	34(2)(b)
by	49(a)	Trial—see Hearing	
. omissions, remedying	48	Venue	
Retention		. defendant's residence to	
. deposit, of	8(4)	determine	5(2, 3)
Security		Withdrawal	
. appeal, for	33(1)(d), (3)	. claim, of	24
. transmission to clerk	37	Witnesses	
		. disobeying subpoena	12(3)
		. examination of	23
		. fees on adjournment of appeal	40
		. subpoena—see Subpoena	

Appendix II

ALBERTA REGULATION 206/68

THE SMALL CLAIMS ACT
THE SMALL CLAIMS ACT REGULATIONS
(O.C. 1219/68)

(Filed June 26, 1968.)

The Lieutenant Governor in Council, upon the recommendation of the Honourable the Attorney General, pursuant to section 49 of The Small Claims Act, is pleased to make The Small Claims Act Regulations as follows:

1. These regulations may be cited as The Small Claims Act Regulations.
2. The forms prescribed in Schedule I of these regulations are the forms which shall be used for the purposes indicated therein under The Small Claims Act.
3. The various fees prescribed in Schedule II are the fees which shall be charged in respect of the various things required to be done as indicated under The Small Claims Act.

SCHEDULE I

FORM A
(Front)

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA
JUDICIAL DISTRICT OF

Docket No.

BETWEEN:

of

Plaintiff

and

of

Defendant
(address)

SUMMONS

To THE ABOVE NAMED DEFENDANT.

THE PLAINTIFF DEMANDS OF you the sum of \$..... as shown by his claim attached hereto.

IF YOU DISPUTE THIS CLAIM YOU ARE REQUIRED to appear before the presiding Magistrate at on the day of at the hour of o'clock in the noon.

DATED the day of A.D. 19.....

.....
Magistrate

(Back)

AFFIDAVIT OF SERVICE

DATED

I, of the City
of, in the Province
of Alberta, MAKE OATH
(occupation)

AND SAY:

1. THAT I did on the day of
..... A.D., serve
..... the person
(corporation), to whom the endorsed
Summons is directed, with the said
Summons by

Plaintiff

Indicate
Applicable
Subsection

(a) Delivering a true
copy thereof
personally to, and
leaving the same
with him.

vs

(b) Enclosing a true
copy of such Sum-
mons in an envelope
addressed to the de-
fendant at

Defendant

..... and
posting the same by
double registered
post in the post
office at
and hereunto annex-
ed, marked "A", is
the receipt from the
Postmaster at
..... for such
double registered
letter, and hereunto
annexed, marked
"B", is the receipt
of the defendant for
such double regis-
tered letter.

SUMMONS
THE SMALL CLAIMS ACT

(c) Leaving a true copy thereof for him at his last or most usual place of abode being located at in the of in the Province of Alberta.

The total sum of \$..... has been deposited with me by the Plaintiff herein as security for fees and costs, particulars of which are as follows:

Deposit \$....
Mileage \$....

2. THAT attached to the said copy of Summons so served by me there was, at the time of such service, particulars of the plaintiff's claim.

under section 8 of The Small Claims Act.

3. THAT to effect such service I necessarily travelled a distance of miles.

4. THAT I am at, or over the age of 21 years, and am literate.

.....
Magistrate

SWORN AT
in the Province of
Alberta, this day
of
A.D. 19

This Summons is adjourned to the day of 19...., at the hour of at the same place (see section 9).

.....
Commissioner of Oaths in
the Province of Alberta.

FORM B

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA
JUDICIAL DISTRICT OF

Docket No.

BETWEEN:

..... Plaintiff
of (address)
and
..... Defendant
of (address)

CLAIM

THE PLAINTIFF CLAIMS from the defendant(s) the sum of \$....., and costs of this action, particulars whereof are as follows (or, are as attached):

DATED at in the Province of Alberta,
this day of

.....
*Signature of the plaintiff or his
authorized agent or solicitor.*

FILED in the office of the Small Claims Court at
in the said Province this day of

.....
*Magistrate or Clerk of the Small
Claims Court.*

FORM C

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA

Docket No.

JUDICIAL DISTRICT OF

BETWEEN:

and

Defendant by
Counterclaim

Plaintiff by
Counterclaim

COUNTERCLAIM

THE DEFENDANT

COUNTERCLAIMS AGAINST THE PLAINTIFF the
sum of \$..... AND COSTS OF THIS COUNTERCLAIM,
particulars whereof are as follows (or, are as attached):

DATED AT this day of

.....
Signature of Counterclaimant

DELIVERED TO ME THIS day of

.....
Magistrate

FORM D

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA

Docket No.

JUDICIAL DISTRICT OF

BETWEEN:

Plaintiff

and

Defendant

CERTIFICATE OF JUDGMENT

This is to certify that in a claim tried by me under the provisions of The Small Claims Act on the day of A.D. 19...., JUDGMENT was given on the day of A.D. 19.... in favour of against who did (did/not) appear, for the sum of \$..... and costs of \$.....

DATED at this day of A.D. 19....

.....
Magistrate

FORM E

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA

Docket No.

JUDICIAL DISTRICT OF

BETWEEN:

Plaintiff

and

Defendant

SUMMONS TO APPEAR FOR EXAMINATION

TO:

WHEREAS on the day of before the undersigned, at in the said Province, Judgment was given against you in the sum of \$..... and costs of \$..... and it appears that you have made default

Strike out } in payment of the said Judgment, or
whichever is } there has been an alteration in your financial
inapplicable } circumstances;

YOU ARE HEREBY REQUIRED to attend before me at, on the day of at the hour of in the noon, and submit to examination in accordance with the provisions of section 31 The Small Claims Act and amendments thereto.

GIVEN under my hand this day of at in the said Province.

.....
Magistrate

FORM F

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA

Docket No.

JUDICIAL DISTRICT OF

SUBPOENA

To

You are required to appear before
at, on the day of
at the hour of in the noon, to give
evidence on the part of the in a suit now pending
between plaintiff, and
defendant, and then and there to be tried;

(See Note at foot)

.....
and take notice that in case you neglect to appear and testify you will
be liable to attachment and will also be liable to the said
..... for any damage he may sustain by reason of such
neglect.

DATED the day of, A.D. 19.....

.....
Magistrate

NOTE—If the witness is required to produce any books, papers, docu-
ments or other thing, insert words to that effect.

FORM G

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA

Docket No.

JUDICIAL DISTRICT OF

BOND

(In Case of Lost Negotiable Instrument)

..... of
(Name, address and occupation of person claiming)

and of
(Name, address and occupation of surety)

and of
(Name, address and occupation of other surety)

and their several heirs, executors and administrators are jointly and severally bound unto his executors, administrators and assigns, in the sum of \$.....

DATED the day of, A.D. 19.....

Now the condition of this bond is that if the bondsmen will save the obligee harmless from any other action against the said..... in respect of a certain

(Note, or as the case may be)

(Here state particulars of note or instrument, including date, due date, amount, names of parties, etc.)

then this bond shall be void.

FORM H

THE SMALL CLAIMS ACT
PROVINCE OF ALBERTA

Docket No.

JUDICIAL DISTRICT OF

BOND (Security for Costs)

..... of
(Appellant's name, address and occupation)

....., and
(Name, address and occupation of surety)

of and their several heirs, executors and administrators, are jointly and severally bound unto his

(Respondent)

executors, administrators and assigns, in the sum of \$100.

DATED the day of, A.D. 19.....

(Appellant)

(Surety)

Now the condition of this bond is that if the above bounden
 will pay and satisfy all costs which may
 (Appellant)
 be payable by him in the proceedings wherein.....
 is plaintiff and defendant, and wherein,
 judgment having been made on the day of.....,
 A.D. 19...., given by a justice of the peace, in favour
 of the said he
 (Defendant or Plaintiff) (Appellant's Name)
 has this day served upon..... a justice of the peace, a
 notice of his intention to appeal from the said judgment, then this bond
 shall be void, but otherwise shall be of full force and effect.

FORM I

THE SMALL CLAIMS ACT
 PROVINCE OF ALBERTA

Docket No.

JUDICIAL DISTRICT OF

AFFIDAVIT OF SERVICE OF DOCUMENT(S)

1. I, of
 (Residence)
 MAKE OATH AND SAY that I did
 (Occupation)

on the day of, A.D., leave
 at the last place of abode of..... (the defendant
 or the plaintiff, as the case may be), a true copy of the annexed docu-
 ment(s) (mark Exhibit A or Exhibit A, B, etc., as required), by

(Indicate applicable subsection)

- (a) Delivering a true copy thereof personally to, and leaving the same with him/her.
- (b) Enclosing a true copy of such summons in an envelope addressed to the defendant at and posting the same by double registered post in the post office at and hereunto annexed, marked "A", is the receipt from the Postmaster at for such double registered letter, and hereunto annexed, marked "B", is the receipt of the defendant for such double registered letter.
- (c) Leaving a true copy thereof for him at his last or most usual place of abode with (an inmate thereof apparently not under 16 years of age), the said place of abode being located at in the of in the Province of Alberta.

2. THAT attached to the said copy of summons so served by me there was, at the time of such service, particulars of the plaintiff's claim.

3. THAT to effect such service I necessarily travelled at distance ofmiles.

4. THAT I am at, or over the age of 21 years, and am literate.

SWORN at in the
Province of Alberta, this
day of, A.D. }
19..... }

.....
*Commissioner of Oaths in
in the Province of Alberta.*

SCHEDULE II

FEEES

A. FEES TO BE TAKEN BY JUSTICES

1. Issuing summons and entering same in procedure book.....\$ 1.50
2. Each additional summons where requested50
3. For hearing and determining the case, one hour or less 1.50
4. For every hour over one hour spent hearing and determining
the case 1.00
5. For certificate of judgment 1.00
6. For every subpoena for a witness or witnesses25
7. Receipt and service of counterclaim 1.00
8. Every bill of costs, when demanded, to be made out in detail,
per page10
9. All necessary postage 1.00
10. Each judgment summons for oral examination—on hearing
same, per hour 1.00

B. COSTS AS BETWEEN THE PARTIES

In every case where a solicitor is employed by the successful party, in addition to all other costs, the magistrate may tax to the successful party a solicitor's fee as follows: where considerable preparation is obvious and necessary for the successful party

- (a) in damage actions, 25 per cent,
- (b) in other actions
 - (i) undefended, 10 per cent,
 - (ii) defended, 20 per cent

the percentage to be calculated as against the defendant on the amount of the judgment recovered, and as against the plaintiff on the amount claimed; provided that in no case shall the fee be less than \$5.

C. WITNESS FEES

- | | |
|-------------------------------------|---------|
| 1. Attendance, per day | \$ 4.00 |
| 2. Interpreter, per day | 3.00 |
| 3. Expert witness, per day | 10.00 |
| 4. Mileage, one way, per mile | .10 |

Where railway can conveniently be used witness shall only be allowed such sum as would be sufficient to pay railway fare in coming to and returning from place of trial, in no case to exceed mileage at above rate.

D. SERVICE FEES

- | | |
|--|--------|
| 1. Serving summons or subpoena and returning same, including affidavit of service or attending to prove same | \$.50 |
| 2. Mileage to serve summons or subpoena, per mile (one way) when necessarily travelled | .10 |

E. DISTRICT COURT CLERK

- | | |
|--|--------|
| 1. On filing judgment, where case tried by district court judge .. | \$.50 |
| 2. On filing judgment in other cases | .50 |
| 3. On filing order or judgment on appeal | .50 |
| 4. Every other filing | .10 |

F. SHERIFFS' FEES

Where execution is issued upon a judgment rendered under this Act, sheriffs, deputy sheriffs and bailiffs shall be allowed the same fees as are prescribed for similar services under the rules governing small debt procedure in the district court.

AREA CODE

C.T. _____

E.A. _____

SMALL CLAIMS PROCEDURE IN ALBERTA

QUESTIONNAIRE TO PUBLIC AT LARGE

1. AGE _____ (Put in actual age and circle appropriate category.)

- | | |
|--------------|-------------|
| (a) Under 20 | (d) 41-50 |
| (b) 21-30 | (e) 51-60 |
| (c) 31-40 | (f) Over 60 |

2. OCCUPATION

- | | |
|------------------|----------------|
| (a) Professional | (c) Managerial |
| (b) Clerical | (d) Laborer |

Actual job: _____

3. EDUCATION

- | | |
|--------------------------|-----------------------------------|
| (a) Grade 8 or less | (d) University but no degree |
| (b) Some high school | (e) One University degree |
| (c) High school graduate | (f) Technical training, e.g. NAIT |

4. INCOME OF HEAD OF HOUSEHOLD

- | | |
|----------------------|-----------------------|
| (a) Less than \$1500 | (e) \$5001-\$7500 |
| (b) \$1501-\$2500 | (f) \$7501-\$10,000 |
| (c) \$2501-\$3500 | (g) \$10,001-\$15,000 |
| (d) \$3501-\$5000 | (h) over \$15,000 |

5. If you loaned someone money and he refused to repay, would you take action if the sum involved

- | | |
|------------------|------------------|
| less than \$25? | less than \$300? |
| less than \$50? | less than \$400? |
| less than \$100? | less than \$500? |
| less than \$200? | \$500? |

5a. What action would you take?

- (a) See a lawyer? (c) Merely write a letter?
(b) Go to Small Claims Court? (d) Other (Specify)

6. If someone damaged your home or automobile, would you take action if the repairs cost

- | | |
|-----------------|------------------|
| less than \$25? | less than \$100? |
| less than \$50? | less than \$150? |
| less than \$75? | less than \$200? |
| | \$200? |

6a. What action would you take?

- (a) See a lawyer? (c) Merely write a letter?
(b) Go to Small Claims Court? (d) Other (specify)

7. If you had a contract to do work for someone and he failed to honor the agreement, would you take action if you lost

- | | |
|-----------------|------------------|
| less than \$25? | less than \$100? |
| less than \$50? | less than \$150? |
| less than \$75? | less than \$200? |
| | \$200? |

7a. What action would you take?

- (a) See a lawyer? (c) Merely write a letter?
(b) Go to Small Claims Court? (d) Other (specify)

8. Did you know there was a Small Claims Court?

- (a) Yes (b) No

9. Did you know there was a procedure whereby you could make a claim yourself, without the help of a lawyer, for \$4?

- (a) Yes (b) No

10. Did you know that the clerks of the Court would help you file your claim?

- (a) Yes (b) No

11. Did you know that the magistrate would assist you in court to go through the proper procedures?

- (a) Yes (b) No

12. If you knew of some of these rights, how did you learn of the information in questions 9-12?

- (a) From a lawyer?
- (b) Have used process before?
- (c) At work?
- (d) From a friend?
- (e) Other (specify)

13. Now that you know of these rights, would your answers change in the previous examples?

Give your present answers to question 5-7.

(a) If you loaned someone money and he refused to repay, would you take action if the sum involved

less than \$25?	less than \$300?
less than \$50?	less than \$400?
less than \$100?	less than \$500?
less than \$200?	\$500?

(b) If someone damaged your home or automobile, would you take action if the repairs cost

less than \$25?	less than \$100?
less than \$50?	less than \$150?
less than \$75?	less than \$200?
	\$200?

(c) If you had a contract to do work for someone and he failed to honor the agreement, would you take action if you lost

less than \$25?	less than \$100?
less than \$50?	less than \$150?
less than \$75?	less than \$200?
	\$200?

14. In the last two years, have you had a small claim? Has anyone owed you money and failed to repay? Has anyone damaged your person or property and failed to make compensation?

If so, describe

15. Did you take action?

(a) Yes

(b) No.

16. If so, what action?

(a) Saw a lawyer.

(c) Merely wrote a letter.

(b) Used Small Claims Court.

(d) Other (specify).

17. If you had a problem now, would you try the Small Claims Court?

(a) Yes

(b) No

If not, why not?

18. What method of mass distribution of information would make you aware of this sort of procedure?

(a) Newspaper ad?

(c) Radio Commercial?

(b) TV Commercial?

(d) Other (specify)?

19. Other remarks?

SMALL CLAIMS STUDY

USERS' QUESTIONNAIRE

1. Docket no.
2. Claim information
3. Age _____ (actual)
 - (1) under 20
 - (2) 21 - 30
 - (3) 31 - 41
 - (4) 41 - 50
 - (5) 51 - 60
 - (6) over 60
4. Occupation _____ (actual)
 - (1) professional
 - (2) managerial
 - (3) laborer
 - (4) clerical
 - (5) others
5. Education
 - (1) less than grade 8
 - (2) grade 8
 - (3) some high school
 - (4) high school graduate
 - (5) some university
 - (6) university degree(s)
 - (7) technical training

6. Income

- | | |
|-------------------|-----------------------|
| (1) under \$1500 | (5) \$5001 - 7500 |
| (2) \$1501 - 2500 | (6) \$7501 - 10,000 |
| (3) \$2501 - 3500 | (7) \$10,001 - 15,000 |
| (4) \$3501 - 5000 | (8) over \$15,000 |

7. How did you learn of the small claims procedure?

- (1) from a lawyer?
- (2) previous use?
- (3) at work?
- (4) other (specify)? _____

8. Did you find the front office clerks helpful?

- (1) in the preparation of the documents?

(a) Yes	(b) No
---------	--------

- (2) in explaining the process to you?

(a) Yes	(b) No
---------	--------

Other comments:

9. Could you have handled the claim without the help given to you by the front office clerks?

(a) Yes	(b) No
---------	--------

10. If you withdrew your claim before trial, why did you do so?
- (1) Defendant paid claim.
 - (2) No payments, simple withdrawal.
 - (3) Other
11. If you went to trial, did you find the magistrate
- (1) helpful in guiding you through the process?
- (a) Yes
 - (b) No
- (2) impartial?
- (a) Yes
 - (b) No
12. After obtaining judgment, did you succeed in collecting your money?
- (1) Yes
 - (2) No
13. If "Yes" to question 12, how did you collect the money?
- (1) Defendant simply paid when informed of judgment.
 - (2) Garnishment
 - (3) Seizure
 - (4) Other
14. Did you need a lawyer's services in the collection of your judgment?
- (1) Yes
 - (2) No

15. Would you use the system again?

(1) Yes

(2) No

If "No", why not?

16. Have you told others of your experience in this case?

(1) Yes

(2) No

17. Have you recommended the small claims court to others?

(1) Yes

(2) No

18. Do you have any comments on how the system could be improved?

19. Any other comments?

Appendix VTable 1

Small Claims Cases

in Alberta

by Centre

April 1, 1968 to March 31, 1969*

<u>Centre</u>	<u>Number of Claims</u>
Calgary	2807
Edmonton	1755
Peace River	660
Lethbridge	632
Red Deer	484
Lacombe	383
Drayton Valley	343
Fort McMurray	279
Carstairs	274
Lac La Biche	257
Castor	234
Grande Prairie	210
Fort Smith	208
Hanna	195
Camrose	191
Fort Macleod	168
Slave Lake	154
Vegreville	121
High Prairie	118
Rocky Mountain House	118
Blairmore	110
Strathmore	36
Taber	31
Jasper	25
Foremost	5
Oyen	2

- * This information was provided by Mr. T.J. Adamson, Supervisor of Legal Offices, Department of the Attorney General, Government of the Province of Alberta. In some instances, the figure represents not only the cases heard in the centre mentioned but also those heard by the magistrate who circuited in neighbouring communities but had his central office in the centre mentioned.

Table 2

The Edmonton Small Claims Court

Type of Claims

June 1, 1967 to Dec. 31, 1968*

<u>Type of Claim</u>	<u>Number</u>	<u>Percent</u>
Damage to home	15	0.7
Damage to automobile	129	5.7
Default on promissory note	339	14.9
Rent	110	4.8
Outstanding account	1200	52.6
Bad cheque	212	9.3
Breach of contract--damages (1)	41	1.8
Return of damage deposit	80	3.5
(2) Other	<u>156</u>	<u>6.7</u>
Total	2282	100.0

* This includes only claims entered in this period and disposed of by April 30, 1969.

(1) Excludes claims for rent and return of damage deposit, and those based on promissory notes, bad cheques and outstanding accounts. These claims were not allowed prior to July 1, 1968.

(2) Includes missing observations.

Table 3

The Edmonton Small Claims Court

Type of Claimants

June 1, 1967 to Dec. 31, 1968*

<u>Type of Claimant</u>	<u>Number of Claims</u>	<u>Percent</u>
Finance Companies	265	12.0
Banks	87	4.0
Large Department Stores	208	9.4
Small Businesses	1025	45.3
Individuals	558	24.5
(1)		
Others	<u>139</u>	<u>4.8</u>
Total	2282	100.0

* This includes only claims entered in this period and disposed of by April 30, 1969.

(1) Includes missing observations, trust companies, landlords (other than individuals).

Table 4

The Edmonton Small Claims Court

Frequent Users

June 1, 1967 to Dec. 31, 1968*

<u>User</u>	<u>Number of Claims</u>	<u>Percent</u>
Simpsons-Sears	144	6.3
Beneficial Finance Co.	38	1.7
Niagara Finance Co.	38	1.7
The Bay	29	1.3
Seaboard Finance Co.	26	1.1
Avco Finance Co.	24	1.1
Royal Bank	22	1.0
Household Finance Co.	22	1.0
Canadian Imperial Bank of Commerce	18	0.8
Pacific Finance Acceptance	15	0.7
Bank of Nova Scotia	15	0.7
Canadian Acceptance	14	0.6
Avco Delta Corp	13	0.6
Fritz Plumbing Co.	10	0.4

* This includes only claims entered in this period and disposed of by April 30, 1969.

Table 5

The Edmonton Small Claims Court

Value of Claims

(excluding costs)

June 1, 1967 to Dec. 31, 1968*

<u>Value of Claim</u>	(1) <u>Number of Cases</u>	(2) <u>Percent</u>
\$1 - \$25	251	11.4
\$26 - \$50	401	18.2
\$51 - \$75	244	11.1
\$76 - \$100	209	9.5
\$101 - \$150	290	13.2
\$151 - \$200	226	10.3
\$201 - \$300	239	10.9
\$301 - \$400	141	6.5
\$401 - \$500	195	8.9
	(1)	(2)
Total	2196	100.0

* This includes only claims entered in this period and disposed of by April 30, 1969.

(1) Excludes missing observations.

(2) Adjusted to exclude missing observations.

Table 6

The Edmonton Small Claims Court

Value of Claims

of Frequent Users

(excluding costs)

June 1, 1967 to Dec. 31, 1968*

Figures represent the number of cases

<u>Value of Claim</u>	<u>Simpsons- Sears</u>	<u>Beneficial Finance</u>	<u>Niagara Finance</u>	<u>The Bay</u>
\$1 - \$50	29	0	0	1
\$51 - \$100	24	3	3	6
\$101 - \$200	28	7	8	12
\$201 - \$300	24	9	8	9
\$301 - \$400	18	4	7	1
	(1)	(2)	(3)	
\$401 - \$500	<u>21</u>	<u>15</u>	<u>12</u>	<u>0</u>
Totals	144	38	38	29

* This includes only claims entered in this period and disposed of by April 30, 1969.

- (1) Seven of these were for \$500 which means, in most cases, some of the debt was abandoned, according to s.3(2) of the Act, in order to bring the matter to the Small Claims Court.
- (2) Twelve of these were for \$500. The comment in note 1 would apply.
- (3) Six of these were for \$500. The comment in note 1 would apply.

Table 7

The Edmonton Small Claims Court

Disposition of Cases

June 1, 1967 to Dec. 31, 1968*

<u>Disposition</u> (1)	<u>Number of Cases</u>	<u>Percent</u>
Settled	601	26.3
Judgment for plaintiff <u>ex parte</u>	673	29.5
Judgment for plaintiff where defendant appears	214	9.4
Judgment for defendant, where contested	26	1.1
Dismissed for non-appearance of plaintiff ⁽²⁾ (3)	106	4.6
Other	<u>662</u>	<u>29.1</u>
Total	2282	100.0

* This includes only claims entered in this period and disposed of by April 30, 1969.

- (1) Notification of settlement was sent to the Court.
- (2) It is probably the case for most of these that a settlement was reached but no notification of it was sent to the Court.
- (3) Includes those adjourned sine die at request of plaintiff, and missing observations. Again, it is probably the case with the large number adjourned sine die that a settlement was reached. Some firms adjourn in this fashion to keep the action open pending full payment on the settlement. The figure would also include a few cases where service of the summons was not effected.

Table 8

The Edmonton Small Claims Court

Disposition of Cases

for Certain Types of Claim

June 1, 1967 to Dec. 31, 1968*

* Figures represent number of cases

Disposition	Rent	On Promissory Note	On Outstanding Bill	Auto Damage
<u>(1)</u>				
Settled	27	70	355	35
Judgment for plaintiff <u>ex parte</u>	34	147	344	26
Judgment for plaintiff where defendant appears	19	32	78	28
Judgment for defendant where contested	2	3	8	2
Dismissed for non-appearance of plaintiff ⁽²⁾	5	19	59	10
<u>(3)</u>				
Other	<u>23</u>	<u>68</u>	<u>356</u>	<u>28</u>
Total	110	339	1200	129

* This includes only claims entered in this period and disposed of by April 30, 1969.

(1) Notification of settlement was sent to the Court.

(2) It is probably the case for most of these that a settlement was reached but no notification of it was sent to the Court.

(3) Includes those adjourned sine die at request of plaintiff and missing observations. It is probably the case with the large number adjourned sine die that a settlement was

reached. Some firms adjourn in this fashion to keep the action open pending full payment on the settlement. The figure would also include a few cases where service of the summons was not effected.

Table 9

The Edmonton Small Claims Court

Disposition of Cases

of Frequent Users

June 1, 1967 to Dec. 31, 1968*

Figures represent number of cases

Disposition <u>(1)</u>	<u>Simpsons- Sears</u>	<u>Beneficial Finance</u>	<u>Niagara Finance</u>	<u>The Bay</u>
Settled	30	10	9	7
Judgment for plaintiff <u>ex parte</u>	37	10	18	11
Judgment for plaintiff where defendant appears	9	9	2	2
Judgment for defendant where contested	0	0	1	0
Dismissed for non- appearance of plaintiff <u>(2)</u>	3	2	0	0
<u>(3)</u> Other	<u>65</u>	<u>7</u>	<u>8</u>	<u>9</u>
Total	144	38	38	29

* This includes only claims entered in this period and disposed of by April 30, 1969.

- (1) Notification of settlement was sent to the Court.
- (2) It is probably the case for most of these that a settlement was reached but no notification of it was sent to the Court.
- (3) Includes those adjourned sine die at request of plaintiff. It is probably the case that a settlement was reached. The case was adjourned to keep it open pending full payment on the settlement. The figure would also include a few cases where service of the summons was not effected.

Table 10

The Edmonton Small Claims Court

Representation by Counsel

June 1, 1967 to Dec. 31, 1968*

<u>Representation</u>	<u>Number of Cases</u>	<u>Percent</u>
Both represented	65	2.8
Plaintiff only	268	11.7
Defendant only	59	2.6
	(1)	
Neither represented	<u>1890</u>	<u>82.9</u>
Total	2282	100.0

* This includes only claims entered in this period and disposed of by April 30, 1969.

- (1) In some files, it was unclear whether or not a lawyer filed the claim for a plaintiff. This uncertainty was resolved by recording the case as one where neither party was represented if the case was settled. This would mean that, in all probability, use of counsel was somewhat more prevalent than the table indicates. It was always clear when a lawyer represented plaintiff or defendant at an appearance in Court.

Table 11

The Edmonton Small Claims Court
 Principal Small Business Users
 June 1, 1967 to Dec. 31, 1968*

<u>User</u>	<u>Number of Cases</u>	<u>Percent of Total Use</u>
Service stations	141	6.2
Clothing stores	40	1.8
Plumbers	32	1.4

* This includes only claims entered in this period and disposed of by April 30, 1969.

Table 12

The Edmonton Small Claims Court

Use of Counsel

by Type of Claimant

June 1, 1967 to Dec. 31, 1968*

Type of Claimant	Number of times Counsel Used	Relative Frequency of use of Counsel ⁽¹⁾
Finance Companies	66	24.9
Large Department Stores	44	21.2
Small Businesses	144	14.0
Individuals	37	6.6

* This includes only claims entered in this period and disposed of by April 30, 1969.

- (1) Percent of total number of claims entered by this type of claimant. It should be pointed out that in some files it was unclear whether or not a lawyer filed the claim. The uncertainty was resolved by recording the cases as one where no counsel was used if the case was settled. This would mean that the real number of times legal counsel was employed and the relative frequency of such employment are somewhat higher than indicated. It was always clear when counsel appeared in Court for a plaintiff or defendant.

Table 13

The Edmonton Small Claims Court

Type of Defendants

June 1, 1967 to Dec. 31, 1968*

<u>Type of Defendant</u>	<u>Number of Cases</u>	<u>Percent</u>
Small Business	342	15.0
Landlord	74	3.2
Individual (1)	1770	77.6
Others	<u>96</u>	<u>4.2</u>
Total	2282	100.0

* This includes only claims entered in this period and disposed of by April 30, 1969.

(1) Includes 80 missing observations.

Table 14

The Edmonton Small Claims Court

Length of Time

for Disposition of Cases (1)

June 1, 1967 to Dec. 31, 1968*

Figures represent number of cases

Number of Appearances	Time for Disposition							
	Less than 3 weeks	3-4 weeks	5-6 weeks	7-10 weeks	11-15 weeks	16-25 weeks	26-40 weeks	More than 41 weeks
One	39	105	34	280	62	3	0	2
Two	27	74	37	183	78	10	2	1
Three or more	0	0	1	14	20	22	1	0
	66	179	72	477	160	35	3	3

* This includes only claims entered in this period and disposed of by April 30, 1969.

(1) Cases which were settled before the first appearance do not enter the figures in this table.

Appendix VI

SELECTED BIBLIOGRAPHY

(i) Articles and treatises

Institute of Judicial Administration, Small Claims Courts in the United States (1955).

-----, Bibliography on Small Claims Courts (1954),
unofficial study 2-U28.

Small Claims Courts as Collection Agencies, a note (1952),
4 Stan. L. Rev. 237.

Maguire, Poverty and Civil Litigation (1923), 36 Harv. L. Rev. 361

Pagter, McCloskey and Reinis, The California Small Claims Court (1964), 52 Calif. L. Rev. 876.

Pound, Administration of Justice in the Modern City (1913),
26 Harv. L. Rev. 315.

Scott, Small Causes and Poor Litigants (1923), 9 Am. Bar Assoc.
J. 457.

(ii) Legislation in other provinces

The Division Courts Act, R.S.O. 1960, c. 110, as amended.

The Small Debts Recovery Act, R.S.M. 1954, c. 245, as amended.

The Small Claims Enforcement Act, R.S.S. 1965, c. 102.

Small Debts Courts Act, R.S.B.C. 1960, c. 359, as amended.

To be called the Small Claims Act as of August 1, 1969.

Appendix VI

SELECTED BIBLIOGRAPHY

(i) Articles and treatises

Institute of Judicial Administration: Small Claims Courts in

the United States (1952).

-----, Bibliography of Small Claims Courts (1952).

Unofficial study 2-158.

Small Claims Courts as Collection Agencies, a note (1952).

4 Stan. L. Rev. 337.

Maguire, Poverty and Civil Litigation (1953). 35 Harv. L. Rev. 161

Papier, McCloskey and Keiser, The California Small Claims

Court (1954). 52 Calif. L. Rev. 875.

Pound, Administration of Justice in the Modern City (1953).

35 Harv. L. Rev. 115.

Scott, Small Claims and Poor Defendants (1953). 9 Am. Bar Assoc.

L. 457.

(ii) Legislation in other provinces

The Division Courts Act, R.S.O. 1960, c. 110, as amended.

The Small Debts Recovery Act, R.S.M. 1954, c. 345, as amended.

The Small Claims Enforcement Act, R.S.S. 1965, c. 103.

Small Debts Courts Act, R.S.B.C. 1960, c. 399, as amended.

To be called the Small Claims Act as of August 1, 1960.

DATE DUE
DATE DE RETOUR[illegible]

